TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No. 137.

J. C. LEAGUE, PLAINTIFF IN ERROR,

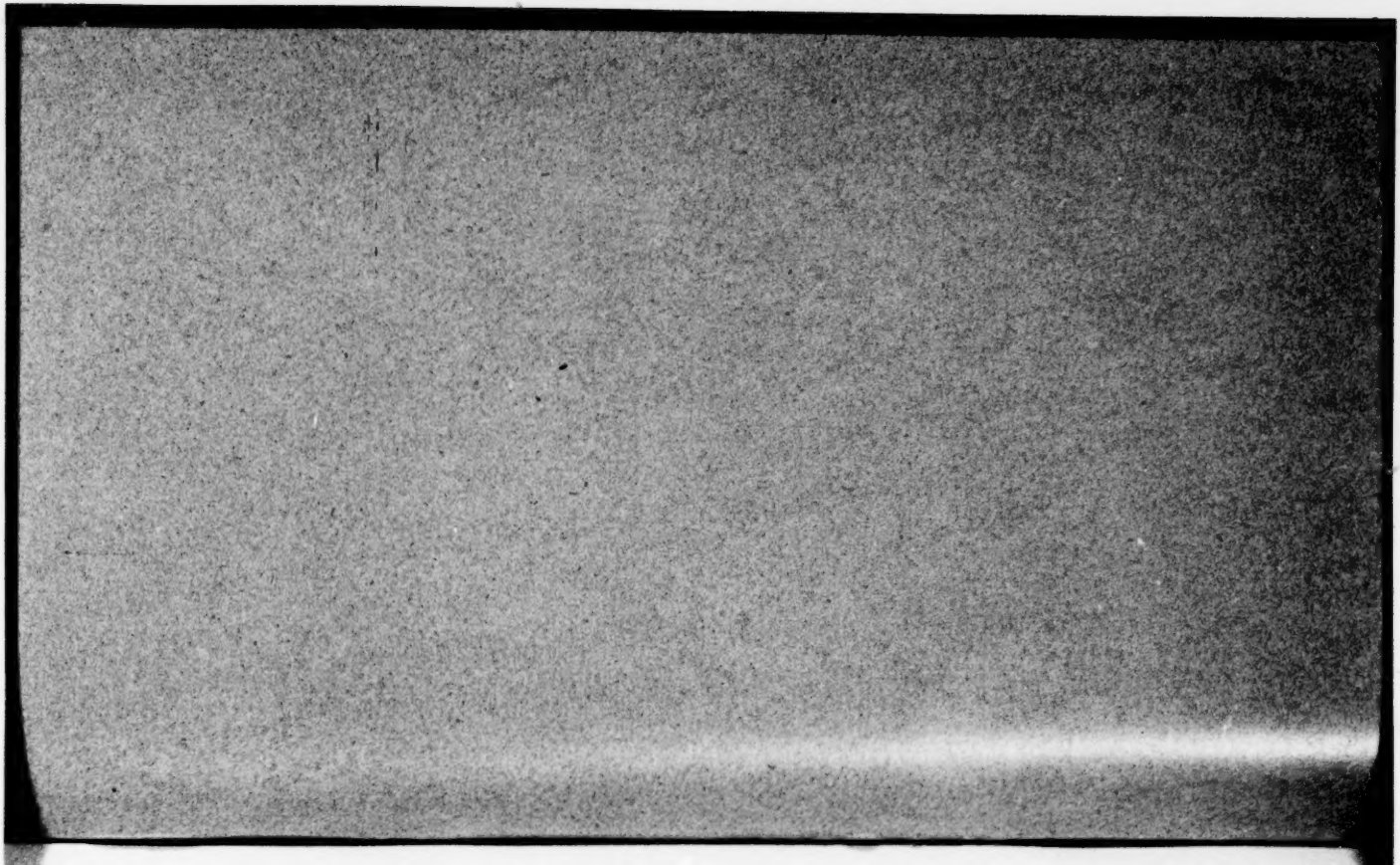
vs.

THE STATE OF TEXAS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF TEXAS.

FILED AUGUST 17, 1900.

(17,877.)



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1 THE STATE OF TEXAS, }
County of San Augustine. }

At a term of the district court begun and holden at San Augustine, before the Hon. Tom C. Davis, and ending on the 9th day of September, A. D. 1899, the following case came on for trial, to wit:

THE STATE OF TEXAS, Plaintiff, }
vs.
J. C. LEAGUE, Defendant. }

Plaintiff's Amended Original Petition.

THE STATE OF TEXAS, }
County of San Augustine. }

In the District Court, San Augustine County, Texas.

To the Honorable Tom C. Davis, judge of the second judicial district, said State and county:

The State of Texas, hereinafter styled plaintiff, leave of the court being obtained, amends her original petition filed in this cause August 6th, 1898, and, amending, says that J. C. League, hereinafter styled defendant — plaintiff avers:

1st. This suit is instituted by authority and order of the commissioners' court of said county, in pursuance of an act of the twenty-fifth legislature of the State of Texas entitled "An act to amend an act entitled 'An act to provide for the collection of taxes heretofore, and that may hereafter be levied, making such taxes a lien on the lands taxed, establishing and continuing such lien, providing for the sale and conveyance of lands delinquent for taxes since January 1st, 1885, which may have been returned delinquent or reported sold to the State or to any county, city, or town for the tax due thereon and not redeemed, or which may hereafter be returned delinquent or reported sold to the State or to any county, city, or town, to satisfy the lien thereon, as enacted by the regular session of the
2 twenty-fourth legislature, being chapter five *a* of title CIV of the Revised Civil Statutes of 1895, relating to delinquent taxes, and to repeal all laws in conflict with this act."

2nd. That the defendant resides in Galveston county, State of Texas.

3rd. Plaintiff further avers that the defendant is justly indebted to the State of Texas and the county of San Augustine in the sum of thirteen hundred and five *dollars* and $\frac{87}{100}$ dollars (1,305.87 dollars), on account of taxes, interest, penalties, and costs, to wit: For the taxes and interest due on the lands hereinafter described for the following years, to wit, for the year- 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1894, 1895, 1896, and the interest and costs and penalties accrued or accruing thereon, by reason of the sale thereof to the State for the non-payment of taxes, aggregating the

sum of thirteen hundred and five and $\frac{87}{100}$ dollars, which said indebtedness more fully appears and is itemized and specified in the tabulated sheet hereto attached, marked Exhibit "A," and made a part hereof.

4th. Plaintiff further avers that the taxes herein sued for are due to the State of Texas and county of San Augustine, were duly and legally levied and assessed in pursuance to the constitution and laws of said State, and that said several sums of money are long since past due and payable, and, though often thereto requested, the defendant has wholly failed and refused to pay the same, or any part thereof, to the plaintiff's damage in the sum of five thousand dollars.

5th. Plaintiff further avers that the said several sums of money due and owing said State and county as aforesaid are a charge and lien upon the following-described land and real estate, to wit: Fourteen sections of S. P. R. R. certificates numbered as follows, viz:

19*y*, abst. No. 265; 20*y*, abst. No. 268; 24*y*, abst. No. 263; 27*y*, abst. No. 275; 28*y*, abst. No. 264; 29*y*, abst. No. 261; 30*y*, abst. No. 276; 31*y*, abst. No. 260; 32*y*, abst. No. 277; 33*y*, abst. No. 269; 34*y*, abst. No. 262; 35*y*, abst. No. 270; 36*y*, abst. No. 271; 39*y*, abst. No. 279; 40*y*, abst. No. 267; 37*y*, abst. No. 278, and also certificate 38*y*, abst. No. 488 and 486, located in two tracts, said whole sections containing 640 acres each, and said section 38*y* located in two tracts; one contains 428⅔ acres; the other 114½ acres; also one-half section located by virtue of certificate No. 40*y*; and plaintiff further avers that the taxes assessed against said lands, as herein set forth, for the years aforesaid were assessed against same for the years above named as the property of M. S. Blanch and James Turner and Cooper and Turner, and as the property of unknown owners, as will be seen by referring to "*exibets*" hereto attached, and that this defendant during the year 1889 became the owner of said lands, and that a part of said taxes, as shown by said "*exibets*," were a lien upon said lands prior to the ownership of this defendant, and a part subsequent to the ownership of this defendant, and plaintiff further avers that defendant is now the owner of said lands, and has rendered the same for taxes, situated in the county of San Augustine, State aforesaid.

6th. Plaintiff further avers that the commissioners' court of said San Augustine county, in said State, in pursuance of the terms and provisions of said act of the twenty-fifth legislature, caused the collector of taxes for said county to prepare a list of all the lands, lots, and parts of lots situated in San Augustine county which had been sold to the State of Texas for taxes since the 1st day of January, 1885, or which had been returned delinquent since the said 1st day of January, 1885, and which had not been redeemed, to be recorded in the delinquent-tax record of said county, showing when the lands or lots were reported sold or delinquent, and the name of the owner at the time of such sale or delinquency, when known, the number of acres, and the amount of the taxes due when first sold, and the amount of all taxes assessed against the owner thereof and returned delinquent for each year, as shown *as shown* by the records in the tax collector's office, and corrections of errors and omissions as to

descriptions of such land were made as required by law and more fully appears by reference to said exhibit, and its *pro rata* share of taxes, costs, and penalties in bulk assessments *were* apportioned to each tract, lot, or parcel of land, and thereupon said list was certified to by the county judge and recorded by the county clerk.

4-22

7th. Upon the completion of said delinquent-tax record the commissioners' court of said county caused the same to be published in a newspaper published in San Augustine county, to wit, the Red Land Express, for three consecutive weeks. A copy of said list as so published was by said commissioners' court filed with — county clerk of said county, as required by law.

8th. Plaintiff avers that it appears from said delinquent-tax record that the lands herein described are therein embraced, and it appears therefrom and it is a fact that the same were sold for the taxes due thereon for the year 1884, and the amount of taxes levied against said land then and thereafter is in said delinquent-tax record stated and shown with the other facts required to be shown by section three of said act, and is shown, stated, and itemized as therein shown by said Exhibit "A," hereto attached and made a part hereof, as aforesaid.

9th. Plaintiff further avers that fully twenty days after the publication of said notice the commissioners' court filed a list of lands so advertised, showing the number of years for which taxes are due and which tax remains unpaid, with the county clerk of San Augustine county, and it is shown in said Exhibit "A" that the lands hereinbefore described were embraced in said list and advertised, as aforesaid, and thereupon the commissioners' court authorized and required this suit to be filed in the name of the State of Texas for the recovery of said several sums of money and for the foreclosure of such lien.

10th. Premises considered, plaintiff prays that the defendant be cited in due form of law and for judgment for all taxes, interest, penalties, and costs, and the lien be in all things foreclosed, and that the lands be sold to satisfy said judgment, and for such other relief to which the State may be entitled under the law and the facts; and will ever pray.

JOHN THOMSON,
County Attorney of San Augustine County, Texas.

THE STATE OF TEXAS, }
County of San Augustine. }

Personally appeared before the undersigned authority John Thomson, who, being duly sworn, says that he is the attorney bringing this suit, and that the averments contained in said foregoing petition are true to the best of the knowledge and belief of the affiant.

JOHN THOMSON.

Sworn to and subscribed before me on this the 7th day of Sept., A. D. 1899.

W. J. GARRETT,
Clerk Dist. Court, San A. Co., Tex.

Filed the 7th day of Sept., 1899.

W. J. GARRETT,
Clerk Dist. Court, S. A. Co., Texas.

* * * * * * *

23 *Defendant's Original Answer.*

In the District Court of San Augustine County, August Term, 1899.

THE STATE OF TEXAS
vs.
J. C. LEAGUE. } No. 1559.

The defendant, J. C. League, by his attorney, demurring to plaintiff's petition, says that the same is insufficient in law to entitle plaintiff to maintain its suit, and of this defendant prays judgment of the court; and for special causes of demurrer defendant says that—

1st. Plaintiff's petition does not set forth any facts to show that the property therein described was assessed for taxes as the property of this defendant or that defendant is sued as a subsequent purchaser or as an incumbrancer whose rights have accrued subsequent to the lien for said taxes.

24 2nd. Said petition does not show that defendant is the owner of the lands therein described or that he has any claim or right or title in or to said lands.

3rd. Said petition does not set forth any facts to show that defendant claims the premises described in said petition in privity with or under the persons named as owners in said petition and exhibits.

4th. Said petition is without authority of law in so far as it prays for a judgment against this defendant for the alleged taxes and costs of suit.

5th. The allegations in the 8th paragraph of said petition to the effect that the lands described in said petition were "sold for the taxes of the year 1884 (or were returned delinquent for taxes since the first day of January, 1885)," is ambiguous and in the alternative, and petition does not show to whom the lands were sold, nor does it show whether the suit is based on the fact that said land had been sold for delinquent taxes or on the fact that the taxes claimed were simply returned on the delinquent lists.

6th. It appears from the plaintiff's petition that the lands therein described have been sold to the State and its lien thereby lost, and its claim for taxes for years subsequent to 1884 is an equitable and not a legal claim.

7th. Plaintiff's petition, in so far as plaintiffs seeks to enforce its alleged lien for taxes by a second sale of said land to enforce collection of taxes for which said lands had been previously sold and

bid in by the State, is without authority of law, and the acts of the legislature of Texas on which this suit is based is, in so far as it provides for such second sale, retroactive and void, and said suit thereunder is an attempt to deprive defendant of his property without due process of law.

8th. The 10 per cent. penalty claimed in said petition is without authority of law.

9th. The claim in said petition for taxes of 1884 is without authority of law.

10th. The claim in said petition for interest on the alleged
25 taxes is without authority of law.

11th. The claim in said petition that the interest on the taxes accruing prior to the date when this property was assessed as the property of this defendant constitute a lien on said lands which can be enforced against this defendant is without authority of law.

BLOUNT & GARRISON,
ROB'T M. FRANKLIN,
Attorney for J. C. League.

And for answer in this behalf defendant denies all and singular the allegations of plaintiff's petition, and, further answering, defendant shows that he purchased the lands described in plaintiff's petition and exhibits about the year 1889, and that said lands have been sold by the collector of taxes of San Augustine county for 1884 taxes and for taxes of subsequent years, and they have been in every instance bid in by the collector of taxes for the State of Texas in obedience to the laws of said State, and the officers and agents of said State are attempting in this suit and by their demands on this defendant, made under and by authority of alleged laws of said State enacted long after said sales were made, to ignore said sales and avoid the legal effect of said sales, and said State by its said pretended legislation and by its officers and agents is endeavoring to deprive this defendant of his said lands acquired by him after said land had been sold and bought in by said State. Wherefore defendant prays that he may go hence with his costs.

ROB'T M. FRANKLIN AND
BLOUNT & GARRISON,
Attorney for J. C. League.

THE STATE OF TEXAS, }
County of San Augustine. }

Before the undersigned authority on this day personally appeared Rob't M. Franklin, who, being by me duly sworn, on oath says that the averments in the foregoing petition are true to the best of his knowledge and belief, and that he is the attorney and agent
26 of the defendant, J. C. League, named in said petition.

ROB'T M. FRANKLIN.

Sworn to and subscribed before me this September 2nd, 1899.

W. J. GARRETT,
District Clerk.

Filed September 2nd, 1899.

W. J. GARRETT,
Dist. Clerk.

Plaintiff's Trial Amendment.

In the District Court of San Augustine County, Texas, August Term, 1899.

STATE OF TEXAS
vs.
J. C. LEAGUE.

Now comes the plaintiff and by way of trial amendment says that the Exhibit "A" spoken of, and in which are the taxes, interest, penalties, and costs shown to be due in plaintiff's amended petition, *are* attached to the plaintiff's original petition, and it is prayed that the said exhibits be received as a part of plaintiff's amended petition.

JOHN THOMSON,
Co. Att'y for the State of Texas.

Filed September 9th, 1899.

W. J. GARRETT,
Dist. Clerk.

Final Judgment of Trial Court.

THE STATE OF TEXAS
vs.
J. C. LEAGUE. } No. 1559.

And now, on this the 9th day of September, A. D. 1899, this cause coming on regularly for trial, came the plaintiff, by its attorney, and the defendant also appeared in person and by attorney and announced ready for trial; whereupon came on to be heard the exceptions of the defendant to the plaintiff's petition, and exceptions Nos. 1, 2, 3, and 5 were sustained and the other exceptions overruled
27 and leave granted to plaintiff to amend; to which defendants excepts; and whereupon came on to be heard the exceptions of the defendant to the amended original answer, which were sustained, and *have* granted to file trial amendment, and, all exceptions being overruled, both parties announced ready for trial, and after hearing the pleadings and evidence and duly considering the same the court is of the opinion and finds that the said defendant is indebted to the plaintiff, The State of Texas, for the taxes due it for the year- 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, 1892, 1893, 1894, 1895, and 1896 in the sum of thirteen hundred and five and $\frac{87}{100}$ dollars, including tax and interest, and the further sum of $72.50, am't due the clerk, and ——, amount due printer, and $69.00, amount due collector, *dollars*, being the total amount due on separate parcels of land as hereinafter described. It is therefore ordered, adjudged, and decreed by the court that the plaintiff, The State of Texas, do have and recover of and from the defendant for

the taxes, interest, and costs due on *on* each of the following-described lots or parcels of land as follows:

1. Certificate 31*y*, abstract 260; total am't of the taxes, penalties, and interest due on said lands on the 6th of August, 1898, the sum of $83.64 for the taxes for the years 1884, '5, '6, '7, '8, and 1896.

2. Certificate 29*y*, abstract 261; total am't of the taxes, interest, and penalties and costs, $82.15, for the taxes *for the taxes* for the years 1884, '5, '6, '7, '8, and 1896.

3rd. Certificate No. 34*y*, abstract 262; total am't of taxes, interest, penalties, and costs for the years 1884, '5, '6, '7, '8, & 1896, $83.96.

4th. Certificate 24*y*, abst. No. 263; total amount of taxes, interest, penalties, and costs for the years 1884, 1885, 1886, 1887, 1888, and 1896, $77.94.

5th. Certificate No. 28*y*, abst. No. 264; total amount of taxes, interest, and penalties and costs for the years 1884, 1885, 1886, 1887, 1888, 1894, and 1896, $99.14.

6th. Certificate No. 19*y*, abst. No. 265; total amount of taxes, interest, penalties, and costs for the years 1884, 1885, 1886, 1887, 1888, and 1896, $88.67.

28 7th. Certificate No. 40*y*, abst. No. 267; total amount of taxes, interest, penalties, and costs for the years 188–, 1886, 1887, 1888, 1885, 1895, and 1896, $35.90.

8th. Certificate No. 20*y*, abst. No. 268; total amount of taxes, interest, penalties, and costs for the years 1884, 1885, 1886, 1887, 1888, and 1896, $83.20.

9th. Certificate No. 33*y*, abst. No. 269; total amount of taxes, interest, penalties, and costs for the years 1884, 1885, 1886, 1887, 1888, and 1896, $84.18.

10th. Certificate No. 35*y*, abst. No. 270; total amount of taxes, interest, penalties, and costs for the years 1884, 1885, 1886, 1887, 1888, and 1896, $83.99.

11th. Certificate No. 36*y*, abst. No. 271; total amount of taxes, interest, penalties, and costs for the years 1884, 1885, 1886, 1887, 1888, 1889, 1890, 1891, and 1896, $138.90.

12th. Certificate No. 27*y*, abst. No. 275; total amount of taxes, interest, penalties, and costs for the years 1884, 1885, 1886, 1887, 1888, and 1896, $83.26.

13th. Certificate No. 30*y*, abst. No. 376; total amount of taxes, interest, penalties, and costs for the years 1884, 1885, 1886, 1887; and 1896, $71.68.

14. Certificate No. 32*y*, abst. No. 277; total amount of taxes, interest, penalties, and costs for the years 1884, 1885, 1886, 1887, 1888, and 1896, $83.04.

15. Certificate No. 37*y*, abst. No. 278; total amount of taxes, interest, penalties, — for the years 1884, 1885, 1886, 1887, 1888, and 1896, $83.04.

15. Certificate No. 39*y*, abst. No. 279; total amount of taxes, interest, penalties, and costs for the years 1884, 1885, 1886, 1887, 1888, and 1896, $82.29.

16. Certificate Nos. 38*y*, abst. Nos. 485; total amount of taxes, in-

terest, penalties, and costs for the years 1884, 1885, 1886, 1887, 1888, 1889, 1894, 1895, $11.23.

17. Certificate No. 38*y*, abst. No. 486; total amount of taxes,
29 interest, penalties, and costs for the years 1884, 1885, and 1887, $27.89, with interest on each of said items of recovery from this the 9th day of September, 1899, until paid, at the rate of six per cent. per annum, together with all costs of suit, for which let execution issue.

And it is adjudged and decreed that a lien exists against each of said tracts or parcels of land for the amount of the taxes, interest, and costs herein adjudged to be due on the same, which lien is hereby foreclosed on each of said tracts of land; and it is further ordered, adjudged, and decreed that an order of sale be issued by the clerk of this court, directed to the sheriff or any constable of San Augustine county, Texas, commanding such officer to seize, levy upon, and advertise for sale, as under execution, each of said tracts of land and sell the same to the highest bidder for cash, as under execution, but if the defendant or his attorney shall, at any time before the sale, file with the sheriff or other officer in whose hands this order of sale shall be placed, a written request that the property described therein shall be divided and sold in less tracts than the whole, together with a description of said subdivisions, then such officer shall sell the land in said subdivisions as the defendant may request, and in such case shall only sell as many subdivisions, as near as may be, to satisfy this judgment, interest, and costs, and after the payment of the judgment, interest, and cost of suit herein adjudged against it the remainder of the purchase price, if any, shall be paid by the sheriff to the clerk of this court, to be retained by him, subject to the order of the court, for the period of two years, after which time the court may order the same paid to the State treasurer, who shall hold the same is trust to be paid to the defendant in the manner prescribed by law.

It is further ordered by the court that the officer executing this order of sale shall make a deed to the purchaser or purchasers at such sale upon their complying with the terms thereof, such sale and deed thereunder to be made subject to the right of the defendant to redeem the land so sold within two years from the date of said sale upon paying to the purchaser double the amount of the money paid by said purchaser for said land, which condition shall be expressed in the deed to the purchaser.

30 And it is further ordered that the order of sale herein directed to be issued shall have the force and effect of a writ of possession as between the parties to this suit or any one claiming under the defendants or either of them by any right acquired, pending this suit, to place the purchaser in possession, and the officer executing this order of sale is directed by virtue thereof to place the purchaser or purchasers of such property at such sale in possession thereof within thirty days after such day of sale.

In the event said lands should not bring enough to pay the taxes, interest, penalties, and costs, then it is ordered that no further execution issue in said cause; to which judgment the defendant excepts

and in open court gives notice of an appeal to the court of civil appeals of the 1st supreme dist. of Texas. It is ordered that 10 days be given after the adjournment of this court in which to file a statement of facts.

Statement of Facts.

In the District Court of San Augustine County, Texas, 1899.

THE STATE OF TEXAS
vs.
J. C. LEAGUE. } No. 1559.

On the trial of the above styled and numbered cause it is agreed that the following pages comprise the facts proven on the trial of said cause on the 9th day of September, 1899, and all the facts:

1st. Plaintiff proved that the delinquent-tax record on file in the office of the county clerk and duly certified to had been duly and legally published, and that—

2nd. The publication of same was made more than twenty days before the filing of this suit, and—

3rd. Said delinquent-tax record showed with reference to the lands in controversy the following words and figures:

31 & 32

Year delinquent or returned.	Owner.	Abst. No.	Original grantee.	Cert. No.	Patentee.	Quantity.	No. of acres delinquent.	State and county taxes due.						Interest.		10 per cent. penalty.	Grand total.	Remarks.
								Ad valorem.	School.	Special.	Total State.	Ad valorem.	Total.	State.	County.			
1884	Blanch, M. S.	261	S. P. R. R. Co.	319	S. P. R. R. Co.	640	214	64	.....	.....	64	1 39	1 39	42	1 12	35	3 92	Sold to State, cost 15c.
1884	Turner, James	"	"	"	"	"	428	1 28	.....	.....	1 28	2 78	2 98	98	1 06	37	4 11	
1885	Blanch, M. S.	"	"	"	"	"	214	53	26	.....	79	1 39	2 18	52	1 06	37	3 96	
1885	Turner, James	"	"	"	"	"	214	53	26	.....	79	1 39	2 18	52	1 06	37	3 96	
1886	Unknown	"	"	"	"	"	428	1 07	53	1 60	2 60	2 78	4 38	1 04	2 12	74	7 70	
1886	Blanch, M. S.	"	"	"	"	"	426	1 06	53	1 59	2 59	2 77	4 36	1 04	2 12	73	7 65	
1887	"	"	"	"	"	"	214	53	26	80	1 59	1 39	2 98	52	1 06	37	4 11	
1887	Turner, James	"	"	"	"	"	214	53	26	40	1 19	1 39	2 58	52	1 06	37	3 96	
1888	Unknown	"	"	"	"	"	640	1 60	80	2 40	4 80	4 15	8 95	1 57	3 20	1 12	12 80	
1896	Unknown	"	"	"	"	"	640	2 56	1 30	3 86	6 72	4 15	10 87	1 57	3 20	1 12	16 14	
									2 31	4 87							15	
																	83 64	

	Owner.	Abstract number.	Original grantee.	Certificate number.	Patentee.	Quantity.	Acres sold of delinquent.	State and county taxes due.						Interest.			Grand total.	Remarks.
								Ad valorem.	School.	Special.	Total State.	Ad valorem.	Total.	State.	County.			
1884	M. S. Blanch	261	S. P. R. R. Co.	299	S. P. R. R. Co.	640	214	64	.....	.....	64	1 39	1 39	42	1 12	35	3 92	Sold to State, cost 15c.
1884	James Turner	"	"	"	"	"	428	1 28	.....	.....	1 28	2 78	2 98	98	1 06	37	4 11	
1885	M. S. Blanch	"	"	"	"	"	214	53	26	.....	79	1 39	2 18	52	1 06	37	3 96	
1885	J. Turner	"	"	"	"	"	214	53	26	.....	79	1 39	2 18	52	1 06	37	3 96	
1886	Unknown	"	"	"	"	"	428	1 07	53	1 60	2 60	2 78	4 38	1 04	2 12	74	7 70	
1886	M. S. Blanch	"	"	"	"	"	426	1 06	53	1 59	2 59	2 77	4 36	1 04	2 12	73	7 65	
1887	"	"	"	"	"	"	214	53	26	80	1 59	1 39	2 98	52	1 06	37	4 11	
1887	James Turner	"	"	"	"	"	214	53	26	40	1 19	1 39	2 58	52	1 06	37	3 96	
1888	Unknown	"	"	"	"	"	640	1 60	80	2 40	4 80	4 15	8 95	1 57	3 20	1 12	12 80	
1896	Unknown	"	"	"	"	"	640	2 56	1 30	3 86	6 72	4 15	10 87	1 57	3 20	1 12	16 14	
									2 31	4 87							15	
																	82 15	

33 & 34

Year delinquent or rendered.	Owner.	Abst. No.	Original grantee.	Cert. No.	Patentee.	Quantity.	No. of acres delinquent.	State and county taxes due.						10 per cent. penalty.	Interest.		Grand total.	Remarks.
								Ad valorem.	School.	Total State.	Ad valorem.	Special.	Total.		State.	County.		
1884	J. Turner	262	S. P. R. R. Co	349	S. P. R. R. Co	640	428	1 28		1 28	2 78		2 78	75	1 07	2 33	8 21	Sold to State, cost 15c.
1884	M. S. Blatch	"	"	"	"	"	214	64		64	1 39		1 39	37	54	1 17	4 11	
1885	"	"	"	"	"	"	214	53		53	1 39		1 39	38	61	1 07	4 24	
1885	J. Turner	"	"	"	"	"	428	1 07		1 07	2 78		2 78	78	1 25	2 17	8 58	
1886	Unknown	"	"	"	"	"	426	1 06		1 06	2 77		2 77	77	1 14	2 09	8 24	
1886	M. S. Blatch	"	"	"	"	"	214	53		53	1 39		1 39	38	55	1 00	4 10	
1887	J. Turner	"	"	"	"	"	426	80		80	2 09		2 09	57	79	1 36	6 00	
1887	Unknown	"	"	"	"	"	214	40		40	1 39		1 39	38	58	1 00	4 10	
1888	Unknown	"	"	"	"	"	640	96	1 20	2 16	4 80		4 80	1 08	1 58	2 74	11 95	
1896	"	"	"	"	"	"	640	56	1 20	1 76	3 50	3 20	6 70	1 11	1 39	2 24	12 24	
	Total							21	21	42	1 12		1 54	1 46	1	1 60	16 14	
																	83 96	
1884	J. Turner	263	S. P. R. R. Co	249	S. P. R. R. Co	640	428	1 28		1 28	2 78		2 78	72			8 00	
1885	"	"	"	"	"	"	640	1 60	80	2 40	4 16		4 16	1 15			12 65	
1885	Unknown	"	"	"	"	"	640	1 60	80	2 40	4 16		4 16	1 10			12 22	
1887	J. Turner	"	"	"	"	"	640	1 60	1 20	3 60	6 24		6 24	1 82			17 82	
1887	Unknown	"	"	"	"	"	640	96	1 20	2 16	4 80		4 80	1 36			10 96	
1888	Unknown	"	"	"	"	"	640	56	1 20	1 76	3 50	3 20	6 70	1 46			16 16	
1896	Unknown	"	"	"	"	"	640	56	2 20	2 76	5 12	3 20	8 32					
	Total																87 94	

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Year delinquent or returned.	Owner.	Abst. No.	Original grantee.	Cert. No.	Patentee.	Quantity.	No. of acres delinquent.	State and county taxes due.						In per cent. penalty.	Interest.		Grand total.	Remarks.
								Ad valorem.	School.	Total State.	Ad valorem.	Special.	Total.		State.	County.		
1884	M. S. Blanch	264	S. P. R. R. Co	289	S. P. R. R. Co	640	214	64	.....	64	1 39	.....	1 39	37	53	1 17	4 10	Sold to State, 15c.
1884	J. Turner	"	" " "	"			428	1 28	.....	1 28	2 78	.....	2 78	74	1 07	2 33	8 20	
1885	M. S. Blanch	"	" " "	"			224	53	26	79	1 39	.....	1 39	38	61	1 07	4 17	
1885	J. Turner	"	" " "	"			428	1 07	53	1 60	2 78	.....	2 78	78	1 24	2 16	8 56	
1886	Unknown	"					426	1 07	53	1 60	2 77	.....	2 77	75	1 15	1 99	8 26	
1886	M. S. Blanch	"					214	53	26	79	1 39	.....	1 39	39	56	1 00	4 11	
1887	" "	"					214	80	40	1 20	2 09	.....	2 09	54	79	1 38	6 00	
1887	J. Turner	"					426	1 60	80	2 40	4 15	.....	4 15	1 08	1 58	2 74	11 95	
1804	Unknown	"					580	1 85	1 54	3 39	4 00	3 05	7 05	1 40	81	1 91	15 46	
1888	"	"					640	96	1 20	2 16	4 80	.....	4 80	1 11	1 29	2 88	12 24	
1896	"	"					640	2 56	2 30	4 86	5 12	3 20	8 32	1 40	50	1 00	16 14	
																	15	
	Total																$99 19	
1884	M. S. Blanch	265	S. P. R. R. Co	290	S. P. R. R. Co	640	214	64	.....	64	1 39	.....	1 39	37	54	1 17	4 11	Sold to State, costs 15c.
1884	J. Turner	"	" " "	"	" " "	"	640	1 92	.....	1 92	4 16	.....	4 16	1 12	1 61	3 57	12 38	
1885	M. S. Blanch	"	" " "	"	" " "	"	214	53	26	79	1 39	.....	1 39	39	62	1 08	4 27	
1885	J. Turner	"	" " "	"		"	428	1 07	53	1 60	2 78	.....	2 78	76	1 09	2 17	8 40	
1886	Unknown	"					426	1 06	53	1 59	2 77	.....	2 77	75	1 14	1 99	8 24	
1886	M. S. Blanch						214	53	26	79	1 39	.....	1 39	39	58	1 00	4 13	
1887	" "						214	80	40	1 20	2 09	.....	2 09	54	79	1 38	6 00	
1887	J. Turner						426	1 60	80	2 40	4 15	.....	4 15	1 08	1 58	2 74	11 95	
1888	Unknown						640	96	1 20	2 16	4 80	.....	4 80	1 11	1 29	2 88	12 24	
1896	Unknown						640	2 56	2 30	4 86	5 12	3 20	8 32	1 46	50	1 00	16 14	
																	15	
																	$88 01	

Year delinquent or returned.	Owner.	Abst. No.	Original grantee.	Cert. No.	Patentee.	Quantity.	No. of acres delinquent.	State and county taxes due.						10 per cent. penalty.	Interest.		Grand total.	
								Ad valorem.	School.	Total State.	Ad valorem.	Special.	Total.		State	County.		
1884	Cooper & Turner	267	S. P. R. R. Co.	409	S. P. R. R. Co.	320	320	96	.....	96	2 08	.....	2 08	56	80	1 75	6 15	Sold to State, 15c.
1885	Unknown	"	" " " "	"	.....	"	320	80	40	1 20	2 08	.....	2 08	56	86	1 49	6 19	
1886	Unknown	"	" " " "	"	.....	"	320	80	40	1 20	2 08	.....	2 08	54	79	1 37	5 98	
1887	Cooper & Turner	.....	.....	.....	.....	.....	320	32	40	72	1 60	.....	1 60	37	43	96	4 08	
1888	Unknown	.....	.....	.....	.....	.....	50	25	20	45	40	25	65	12	08	11	1 41	
1895	"	.....	.....	.....	.....	.....	320	80	40	1 20	2 08	.....	2 08	58	93	1 62	6 41	
1885	Cooper & Thomas	.....	.....	.....	.....	.....	320	88	79	1 67	1 76	1 10	2 86	50	20	30	5 53	
1896	Unknown	.....	.....	.....	.....	.....											15	
	Total	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	$37 90	
1884	M. S. Blanch	268	S. P. R. R. Co.	209	S. P. R. R. Co.	640	214	64	.....	64	1 39	.....	1 39	35	42	1 12	3 92	Sold to State, costs 15c.
1884	J. Turner	"	.....	.....	" " " "	"	428	1 28	.....	1 28	2 78	.....	2 78	72	98	2 24	8 00	
1885	M. S. Blanch	.....	.....	.....	.....	.....	214	53	26	79	1 39	.....	1 39	37	52	1 04	4 11	
1885	J. Turner	.....	.....	.....	.....	.....	428	1 07	53	1 60	2 78	.....	2 78	76	1 17	2 08	8 39	
1886	Unknown	.....	.....	.....	.....	.....	426	1 07	53	1 60	2 77	.....	2 77	73	1 08	1 92	8 10	
1886	M. S. Blanch	.....	.....	.....	.....	.....	214	1 53	26	79	1 39	.....	1 39	39	48	96	4 37	
1887	J. Turner	.....	.....	.....	.....	.....	426	1 60	80	2 40	4 15	.....	4 15	1 07	1 54	2 64	11 80	
1887	M. S. Blanch	.....	.....	.....	.....	.....	214	80	40	1 20	2 09	.....	2 09	1 09	77	1 32	5 91	
1888	Unknown	.....	.....	.....	.....	.....	640	2 96	1 20	2 16	.....	.....	4 80	.....	1 20	2 80	12 05	
1896	"	.....	.....	.....	.....	.....	640	2 56	2 30	4 86	.....	.....	8 32	.....	58	98	16 40	
	Total	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	15	
																	$83 20	

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Year delinquent or returned.	Owner.	Abst. No.	Original grantee.	Cert. No.	Patentee.	Quantity.	No. of acres delinquent.	State and county taxes due.						10 per cent. penalty.	Interest.		Grand total.	Remarks.
								Ad valorem.	School.	Total State.	Ad valorem.	Special.	Total.		State.	County.		
1884	J. Turner	.....	S. P. R. R. Co	.....	S. P. R. R. Co	640	428	4 28	.....	1 28	2 78	.....	2 78	75	1 17	2 33	8 31	
1884	M. S. Blanche	.....	" " "	.....	" " "	"	214	64	.....	64	1 39	.....	1 39	37	54	1 17	4 11	
1885	" "	.....	" " "	.....	" " "	"	214	53	26	79	1 39	.....	1 39	38	61	1 08	4 25	
1885	J. Turner	.....	.....	.....	.....	"	428	1 07	53	1 60	2 78	.....	2 78	78	1 25	2 17	8 58	
1886	Unknown	.....	.....	.....	.....	.....	426	1 06	53	1 59	2 77	.....	2 77	75	1 14	1 96	8 24	
1886	M. S. Blanche	.....	.....	.....	.....	.....	214	53	26	79	1 39	.....	1 39	37	57	1 00	4 12	
1887	" "	.....	.....	.....	.....	.....	214	80	40	1 20	2 09	.....	2 09	54	79	1 38	6 00	
1887	J. Turner	.....	.....	.....	.....	.....	426	1 60	80	2 40	4 15	.....	4 15	1 08	1 58	2 74	11 85	
1888	Unknown	.....	.....	.....	.....	.....	640	96	1 20	2 16	4 80	.....	4 80	1 11	1 29	2 88	12 24	
1896	"	.....	.....	.....	.....	.....	640	2 56	2 30	4 86	5 12	3 20	8 32	1 47	58	1 00	16 23	
																	15	
	Total	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	$84 18	
1884	J. Turner	.....	S. P. R. R. Co	.....	S. P. R. R. Co	640	428	1 28	.....	1 28	2 78	.....	2 78	74	1 07	2 33	8 20	Sold to State, costs 15c.
1884	M. S. Blanche	.....	" " "	.....	.....	.....	214	64	.....	64	1 39	.....	1 39	37	54	1 17	4 11	
1885	M. S. Blanche	.....	" " "	.....	.....	.....	214	53	26	79	1 39	.....	1 39	38	61	1 07	4 24	
1885	J. Turner	.....	.....	.....	.....	.....	428	1 07	53	1 60	2 78	.....	2 78	78	1 25	2 17	8 58	
1886	Unknown	.....	.....	.....	.....	.....	426	1 07	53	1 60	2 77	.....	2 77	78	1 25	2 16	8 56	
1886	M. S. Blanche	.....	.....	.....	.....	.....	214	53	26	79	1 39	.....	1 39	36	56	1 00	3 95	
1887	" "	.....	.....	.....	.....	.....	214	80	40	1 20	2 09	.....	2 09	54	79	1 38	6 01	
1887	J. Turner	.....	.....	.....	.....	.....	426	1 60	80	2 40	4 15	.....	4 15	1 09	1 58	2 74	11 96	
1888	Unknown	.....	.....	.....	.....	.....	640	96	1 20	2 16	4 80	.....	4 80	1 11	1 29	2 88	12 24	
1896	"	.....	.....	.....	.....	.....	640	2 56	2 30	4 86	5 12	3 20	8 32	1 46	50	1 00	16 14	
																	15	
	Total	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	83 99	

Year delinquent or returned.	Owner.	Abst. No.	Original grantee.	Cert. No.	Patentee.	Quantity.	No. of acres delinquent.	State and county taxes due.						10 per cent. penalty.	Interest.		Grand total.	Remarks.
								Ad valorem.	School.	Total State.	Ad valorem.	Special.	Total.		State.	County.		
1884	J. Turner	271	S. P. R. R. Co.	36½	S. P. R. R. Co.	640	428	1 28	.....	1 28	2 78	.....	2 78	75	1 08	2 34	7 48	
1884	M. S. Blanch	"	" " " "	"	" " " "	"	214	64	.....	64	1 39	.....	1 39	37	54	1 17	3 74	
1885	" "	"	" " " "	"	" " " "	"	214	53	26	79	1 39	.....	1 39	39	62	1 08	3 88	
1885	J. Turner	.....	.....	.....	.....	.....	428	1 07	53	1 60	2 78	.....	2 78	78	1 25	2 17	7 80	
1886	Unknown	.....	.....	.....	.....	.....	426	1 06	53	1 59	2 77	.....	2 77	75	1 14	1 99	7 49	
1886	M. S. Blanch	.....	.....	.....	.....	.....	214	53	26	79	1 39	.....	1 39	37	57	1 00	3 75	
1887	" "	.....	.....	.....	.....	.....	214	80	40	1 20	2 09	.....	2 09	54	79	1 38	6 00	
1887	J. Turner	.....	.....	.....	.....	.....	426	1 60	80	2 40	4 15	.....	4 15	1 09	1 58	2 74	11 96	
1888	Unknown	.....	.....	.....	.....	.....	640	96	1 20	2 16	4 80	.....	4 80	1 11	1 30	2 88	12 25	
1889	Unknown	.....	.....	.....	.....	.....	640	2 56	1 60	4 16	8 32	.....	8 32	1 92	2 25	4 40	22 14	
1890	Unknown	.....	.....	.....	.....	.....	640	2 56	2 57	4 16	8 32	.....	8 32	1 85	1 99	3 99	20 31	
1891	Unknown	.....	.....	.....	.....	.....	626¾	2 09	2 57	3 57	5 01	3 13	8 14	1 67	1 54	3 42	18 43	
1896	Unknown	.....	.....	.....	.....	.....	626¾	2 51	2 25	4 76	5 01	3 13	8 14	1 24	56	97	13 67	
	Total	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	$138 92	
1884	M. S. Blanch	275	S. P. R. R. Co.	27½	S. P. R. R. Co.	640	214	64	.....	64	1 39	.....	1 39	35	42	1 12	3 92	Sold to State, 15c.
1884	J. Turner	"	.....	"	.....	.....	428	1 28	.....	1 28	2 78	.....	2 78	72	98	2 24	8 00	
1885	M. S. Blanch	"	.....	"	.....	.....	214	53	26	79	1 39	.....	1 39	38	65	1 04	4 35	
1885	J. Turner	"	.....	"	.....	.....	428	1 07	53	1 60	2 78	.....	2 78	77	1 17	2 08	8 40	
1886	Unknown	.....	.....	.....	.....	.....	426	1 07	53	1 60	2 77	.....	2 77	73	1 08	1 92	8 10	
1886	M. S. Blanch	.....	.....	.....	.....	.....	2 4	53	26	79	1 39	.....	1 39	36	48	96	3 98	
1887	" "	.....	.....	.....	.....	.....	214	80	40	1 20	2 09	.....	2 09	59	77	1 32	6 50	
1887	J. Turner	.....	.....	.....	.....	.....	426	1 60	80	2 40	4 15	.....	4 15	1 07	1 54	2 64	11 80	
1888	Unknown	.....	.....	.....	.....	.....	640	96	1 20	2 16	4 80	.....	4 80	1 09	1 20	2 80	12 05	
1896	Unknown	.....	.....	.....	.....	.....	640	2 56	2 30	4 86	5 12	3 20	8 32	1 47	58	98	16 21	
																	15	
																	$83 26	

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Year delinquent or returned.	Owner.	Abst. No.	Original grantee.	Cert. No.	Patentee.	Quantity.	No. of acres delinquent.	State and county taxes due.						10 per cent. penalty.	Interest.		Grand total.	Remarks.
								Ad valorem.	School.	Total State.	Ad valorem.	Special.	Total.		State.	County.		
1884	M. S. Blanche	276	S. P. R. R. Co.	32y	S. P. R. R. Co.	640	214	64	.....	64	1 39	.....	1 39	37	54	1 17	4 07	Sold to State, 15c.
1884	J. Turner	"					428	1 28	.....	1 28	2 78	.....	2 78	73	1 07	2 34	8 09	
1885	M. S. Blanche	"					214	53	26	79	1 39	.....	1 39	38	61	1 08	4 25	
1885	J. Turner	"					428	1 07	53	1 60	2 78	.....	2 78	78	1 25	2 17	8 58	
1886	Unknown	.....					426	1 06	53	1 59	2 78	.....	2 78	75	1 14	1 99	8 24	
1886	M. S. Blanche	.....					214	53	26	79	1 39	.....	1 39	37	57	1 00	4 12	
1887	" "	.....					214	80	40	1 20	2 09	.....	2 09	54	79	1 38	6 00	
1887	J. Turner	.....					426	1 60	80	2 40	4 15	.....	4 15	1 08	1 58	2 74	11 95	
1896	Unknown	.....					640	2 56	2 30	4 86	5 12	3 20	8 32	1 47	58	1 00	16 23	
	Total	.....				.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	$71 68	
1884	M. S. Blanche	277	S. P. R. R. Co.	32y	T. & P. R. R. Co.	640	214	64	.....	64	1 39	.....	1 39	37	54	1 17	4 07	Sold to State, 15c.
1884	James Turner	"				"	428	1 28	.....	1 28	2 78	.....	2 78	65	66	2 33	7 21	
1885	M. S. Blanche	.....				"	214	53	26	79	1 39	.....	1 39	38	61	1 08	4 25	
1885	J. Turner	.....				.....	428	1 07	53	1 60	2 78	.....	2 78	78	1 25	2 17	8 58	
1886	Unknown	.....				.....	426	1 07	53	1 60	2 77	.....	2 77	75	1 14	1 99	8 24	
1886	M. S. Blanche	.....				.....	214	53	26	79	1 39	.....	1 39	37	57	1 00	4 12	
1887	" "	.....				.....	214	80	40	1 20	2 09	.....	2 09	54	79	1 38	6 00	
1887	J. Turner	.....				.....	426	1 60	80	2 40	4 15	.....	4 15	1 08	1 58	2 74	11 95	
1888	Unknown	.....				.....	640	96	1 20	2 16	4 80	.....	4 80	1 11	1 28	2 88	12 24	
1896	Unknown	.....				.....	640	2 56	2 30	4 86	5 12	3 20	8 32	1 47	58	1 00	16 23	
																	15	
	Total	.....				.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....	$83 [illegible]	

Year delinquent or returned.	Owner.	Abst. No.	Original grantee.	Certf. No.	Patentee.	Quantity.	No. of acres delinquent.	State and county taxes due.								Interest.		Grand total.	Remarks.
								Ad valorem.	School.	Total State.	Ad valorem.	Special.	Total.	In per cent. penalty.	State.	County.		
1884	J. Turner	5	S. P. R. R. Co.	359	S. P. R. R. Co.	640	426	1		1	1		1					1	Sold to State, 15c.
1884	M. S. Blanch	5	"	"	"	"	214	64		64	64		64					64	"
1885	"	5	"	"	"	"	214	64	25	89	64		64					64	"
1885	J. Turner	5	"	"	"	"	426	96	33	129	96		96					96	"
1886	Unknown	5	"	"	"	"	214	64	25	89	64		64					64	"
1886	M. S. Blanch	5	"	"	"	"	214	64	25	89	64		64					64	"
1887	"	5	"	"	"	"	214	64	25	89	64		64					64	"
1887	J. Turner	5	"	"	"	"	426	96	33	129	96		96					96	"
1888	Unknown	5	"	"	"	"	214	64	25	89	64		64					64	"
1886	"	5	"	"	"	"	640	96	33	129	96		96					96	"
	Total	5		359	S. P. R. R. Co.	640	426	1		1	1		1					1	Sold to State, 15c.
1884	J. Turner	5	S. P. R. R. Co.	359	S. P. R. R. Co.	640	426	1		1	1		1					1	"
1884	M. S. Blanche	5	"	"	"	"	214	64		64	64		64					64	"
1885	J. Turner	5	"	"	"	"	426	96	33	129	96		96					96	"
1885	M. S. Blanche	5	"	"	"	"	214	64	25	89	64		64					64	"
1886	Unknown	5	"	"	"	"	214	64	25	89	64		64					64	"
1886	M. S. Blanch	5	"	"	"	"	214	64	25	89	64		64					64	"
1887	"	5	"	"	"	"	214	64	25	89	64		64					64	"
1887	J. Turner	5	"	"	"	"	426	96	33	129	96		96					96	"
1888	Unknown	5	"	"	"	"	214	64	25	89	64		64					64	"
1886	"	5	"	"	"	"	640	96	33	129	96		96					96	"

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Year delinquent or returned.	Owner.	Abst. No.	original grantee.	Cert. No.	Patentee.	Quantity.	No. of acres delinquent.	State and county taxes due.								Interest.		Grand total.	Remarks.
								Ad valorem.	School.	Total State.	Ad valorem.	Special.	Total.	10 per cent. penalty.	State.	County.		
1884	M. S. Bintcliffe	485	S. P. R. R. Co.	389	S. P. R. R. Co.	1142	1142½	34	05	34	74		74	09	02	03	1 00	
1885	" "						1142½	38	12	43	74		74	10	02	03	1 15	
1886	" "						1142½	38	14	42	69		69	09	02	03	1 05	
1887	" "						1142½	42	21	63	1 10		1 83	17	02	03	1 85	
1888	" "						1142½	46	29	75	1 46	31	2 52	25	02	03	2 82	
1894	" "						1142½	19	16	35	46	20	1 01	14	02	03	1 54	
1895	" "						1142½	26	23	49	44	25	1 18	12	02	03	1 35	
1896	" "						1142½	22	21	43	44	25	1 12	12	02	03	1 29	
	Total																	$11 23	
1884	J. Turner	483	S. P. R. R. Co.	389	S. P. R. R. Co.	4283	428	1 58	33	1 91	24		24	02	01	01	31	
1885	" "						428	1 67	33	1 1 00	24		24	02	01	01	1 8	
1887	" "						428	1 60	80	1 40	15		15	01	01	01	11	
	Total																	57 89	

49-52 I approve the above as a true and correct statement of the evidence had on the trial of the above-styled cause, tried at the September term of the district court for San Augustine Co., Texas. I have made the same, the parties having failed to agree on a statement of facts, this the 18th of September, 1899.

TOM C. DAVIS,
Judge Presiding.

Filed September 19th, 1899. W. J. Garrett, dist. clerk, by Sam. Garrett, deputy.

* * * * * * *

53 *Defendant's Assignment of Errors.*

No. 1.

In the District Court of San Augustine County, Texas.

THE STATE OF TEXAS
vs.
J. C. LEAGUE. } No. 1559

Defendant's assignments of errors.

1st assignment. The court erred in overruling defendant's general demurrer to plaintiff's amended original petition and trial amendment, said demurrer being based on the following propositions:

a. Sections 11, 13, 15, and 16 of art. 8 of the constitution of the State of Texas provides for the enforcement of delinquent taxes by an annual and summary levy by the collector of taxes, and the designation of this mode of collection operates as an exclusion of all other modes, and this suit or special proceedings for condemnation and sale under a decree of court is without authority of law.

b. Sec. 1, art. 2, of the constitution of Texas, dividing the powers of the government into three separate departments, viz., a legislative, an executive, and a judicial department, and said section prohibiting each department from exercising the powers attached to the other departments, and the collection of taxes being a function
54 of the executive branch of the government, the act of the legislature, by virtue whereof this suit is brought (chap. 5, art. 104, R. C. S.) is unconstitutional and void, in so far as it vests in the court power to collect delinquent taxes, and plaintiff's suit is therefore without authority of law.

c. The act of the legislature (chap. 5, title 104 R. C. S.) under which plaintiff's suit was brought, is retroactive and violates section 16 of the bill of rights of the constitution of the State of Texas, in so far as it enlarges and extends the lien for delinquent taxes and authorizes judgment against subsequent purchasers of lands charged with delinquent taxes assessed and due prior to the passage of said act.

d. The act of the legislature (chap. 5, title 104 R. C. S.) in so far as it ignores the legal effect and operation of sales of land for taxes

made prior to the passage of said act and in so far as it provides for the condemnation and resale of such land for the same taxes, for which said land had been previously sold, is void both as a retroactive law and as an attempt to deprive a citizen of his property without due process of law, in violation of section 16 bill of rights of the constitution of this State, and section 1, of the 14th amendment of the Constitution of the United States, and plaintiff's suit for the condemnation and resale of lands which have been previously sold to the State of Texas, and which had, as shown by plaintiff's petition, changed ownership before the passage of said act, is without authority of law.

e. Plaintiff's petition shows that the taxes sued for were assessed against certain of the tracts described therein, as the property of M. S. Blanche, on certain others of said tracts, as the property of Jas. Turner, against certain others, as the property of Cooper and Turner, and against others as the property of unknown *others*, but said petition failing to complain of said parties, or to pray for citation, or judgment against them, plaintiff has failed to bring before the court a proper defendant against whom, under the law, a judgment could be rendered.

2nd assignment. The court erred in overruling defend-
55 ant's third special demurrer, as reviewed and applied to plaintiff's amended original petition and holding thereby, that plaintiff was not required by law to show that the defendant sued as a subsequent purchaser — claimed the premises described in said petition under or in privity with the persons named as the owners of the premises therein described.

3rd assignment. The court erred in overruling defendant's fourth special demurrer and holding thereby that judgment for the taxes sued for could be entered against the defendant, who is alleged in said petition to be a subsequent purchaser of the premises on which the taxes were levied.

4th assignment. The court erred in overruling defendant's 8th special demurrer, and rendering in pursuance of said ruling judgment for the several amounts claimed as 10 % penalty on the taxes, and in holding thereby that the claim in said petition for 10 % penalty on taxes assessed and due prior to the passage of the act (chap. 5, title 5 R. C. S.) was authorized by law.

5th assignment. The court erred in overruling defendant's 9th special demurrer and giving judgment for the several amounts claimed as taxes for the year 1884, and holding thereby that said act (chap. 5, title 104 R. C. S.) authorizes suit for taxes assessed for the year 1884.

6th assignment. The court erred in overruling defendant's 10th special demurrer and in rendering in pursuance of said ruling judgment for the several amounts claimed in plaintiff's petition as interest on the taxes due for the years 1884 to 1896, inclusive, and in holding thereby that said act (chap. 5, title 104 R. C. S.) and the amendatory — passed by the 25th legislature is not unconstitutional and void in so far as it provides for a charge of 6 % interest on taxes which have been assessed and were due prior to the passage

of said act, or in holding that said charge of interest is authorized by some other law of this State.

7th assignment. The court erred in granting to plaintiff, notwithstanding defendant's objection thereto, leave to amend, when
56–61 plaintiff's petition showed that its cause of action was against certain persons who have not been made parties to this suit and that there was no suit pending in which a judgment could be rendered.

8th assignment. The court erred in adjudging against defendant the taxes, interest, penalties, and costs claimed in plaintiff's petition.

9th. The court erred in rendering judgment against defendant and decree foreclosing plaintiff's alleged lien to secure the taxes sued for without any evidence to show that defendant owned the land described in plaintiff's petition, or that he claimed said land under or in privity with the parties against whom said taxes were assessed.

10th assignment. The acts of the legislature (chap. 42, 24th Leg.) and chap. 103, 25th Legis., embodied in chap. 5, title 104 R. C. S., provide a system for the collection of delinquent taxes and relate to the raising of revenue, and said acts having first originated by bill introduced in the Senate, in contravention of section 33, art. 3 of the Constitution are void, and the court erred in overruling defendant's general demurrer and rendering judgment in this cause.

ROBT M. FRANKLIN,
Of Counsel for Defendant.

Filed November 16th, 1899.

W. J. GARRETT,
District Clerk, San Augustine County, Texas.

* * * * * * *

62 (PROCEEDINGS IN THE COURT OF CIVIL APPEALS.)

Opinion.

(Filed January 19, 1900.)

J. C. LEAGUE, Appellant, *vs.* THE STATE OF TEXAS, Appellee. } No. 2385. Appeal from San Augustine County.

This was a suit brought by the State of Texas against J. C. League for the recovery of the delinquent taxes upon certain land situated in San Augustine county. The suit was brought under chapter 103 of the General Laws of 1897, (p. 132) for the taxes assessed against the land for the years 1884 to 1888 inclusive and for the year 1896 and other years as to some of the tracts of land, and judgment was rendered in favor of the State for the aggregate amount of the taxes for all of said years together with a penalty of ten per cent. thereon, interest and costs. The delinquent list for San Augustine county was properly made up in accordance with the law and embraced the lands described in the judgment, and all necessary steps were taken as prescribed by the law in order to maintain the suit. The

delinquent-tax record showed that the taxes had been assessed as set out in the exhibit attached to the petition, which appears also in the statement of facts. It appeared that the surveys upon which the taxes were sought to be recovered had been assessed for certain years as the property of unknown owners and for other years as the property of certain individuals other than the defendant, all of which is particularly shown by the exhibit which is referred to as a part of this statement. None of the surveys were assessed as the property of the defendant, but from the year 1888 they were assessed as the property of unknown owners with one or two exceptions. The defendant became the owner of the lands in 1889 and was the owner thereof when the suit was brought. The several surveys were sold for the taxes of 1884 and were brought by the State. Appellant contends that it was not
63 proved that he was the owner of the land. It is true that it does not appear in the statement of facts that he was, but there was no motion for a new trial for the want of proof of such fact. It was in no way called to the attention of the court below, and the objection is urged here now for the first time. It was also an admitted fact on the trial of the case. The statute requires the pleadings of the defendant, except those of law, to be verified by the affidavit of the defendant, his agent or attorney. The answer of the defendant verified by the affidavit of his attorney of record shows that he claims to own the lands by purchase since about the year 1889. While it is true that a general denial was pleaded by the defendant the purpose of the statute in requiring the pleadings to be sworn to is to have the true issues in the case presented, and the admission of the defendant in his sworn answer that he is the owner of the land obviated the necessity of proving that fact. Computed separately the several sums adjudged as taxes, interest, penalties and costs separating the year 1884 from all the other years which are stated in the aggregate, are as follows:

Taxes for the year 1884	$97.50
Interest on 1884 taxes	74.31
Penalty on 1884 taxes	17.07
Taxes from 1885 to 1896, inclusive	723.93
Interest on taxes 1885 to 1896, inclusive	365.23
Penalty on taxes 1885 to 1896, inclusive	103.50
Cost of sale	2.50
Clerk's fees and printer's costs	72.50
Collector's fees	69.00
Total judgment, exclusive of court costs	$1,525.60

The district court had jurisdiction of the suit for the foreclosure of the lien for the delinquent taxes on the land described in the petition. The suit was brought in strict compliance with the statute and unless the statute is in contravention of the constitution jurisdiction was properly exercised. By the constitution of 1869
64 a sale of land for taxes was prohibited except by a decree of some court of competent jurisdiction. Const. 1869, art. 12, sec. 21. It is contended that because the constitution of 1876 drops

this restriction of the constitution of 1869 and directs provision by the first legislature for the speedy sale of a sufficient portion of all lands and other property for the taxes due thereon and every year thereafter for the sale of all lands and other property upon which the taxes have not been paid, the sale of property for taxes is prohibited, except by a summary sale by the collector. Const. 1876, art. 8, sections 11, 13, 15 and 16, as well as art. 2, section 1 are cited in support of the contention, it being claimed that a sale of land for taxes by a decree of court is an interference with the executive department of the State government. In further support of this construction of the constitution the various tax laws passed since its adoption are referred to providing for the summary seizure and sale of property for delinquent taxes as a legislative construction of the constitution. But the direction to the legislature to make provision for a speedy sale does not restrict the manner of sale, but rather leaves that to the discretion of the legislature. The constitution certainly does not either in terms or by implication prohibit legislation providing for the foreclosure of the lien for taxes in the courts and a sale thereof by judicial decree. The legislature clearly had the power to provide such manner for the collection of taxes. Legislation under the constitution of 1869 providing for summary seizure and sale was held unconstitutional because such sales were prohibited. There is no prohibition against judicial sales in the constitution of 1876.

Taxes are made a lien upon the property against which they are assessed and the property, not the owner of it at the time the taxes are laid, is liable for the payment thereof, although the law may provide for the personal liability of the owner. The act of the legislature under which this suit is brought does not authorize a personal judgment against the owner for the taxes due upon the land. So the provision that the "proper persons shall be made parties defendant in such suits and shall be served with process, and
65 other proceedings had therein as provided by law for suits of like character in the district courts of this State," is fully met with respect to parties by making the present owner of the land the sole defendant to a suit for the foreclosure of the lien for taxes, and the law does not contemplate a foreclosure against every person who may have been connected with the title at any time during the period covered by the delinquent taxes. It is clear from a reading of the act that only the owner or person claiming the land at the time the suit is brought should be a party defendant.

The land upon which the foreclosure is sought had previously been sold to the State for the taxes assessed against it for the year 1884. While section 3 of the act requires a list made of all land sold for taxes since January 1, 1885, other sections of the act show that collection is only to be made of taxes due or assessed after January 1, 1885. But although a sale of the land for the taxes of 1884 had been made, it had not become absolute. The law under which the sale was made allowed the owner two years in which to redeem it by paying double the amount of the taxes, penalties and costs. Sayle's R. S. (1879) arts. 4759, 4758. Subsequent acts of several

legislatures were passed extending the time for redemption. By section 13 of the act now under consideration any delinquent taxpayer or any one having an interest in the land sold for taxes is allowed to redeem the same by paying to the collector all taxes due thereon since January 1, 1885, with interest at the rate of six per cent. per annum and all costs and a penalty of ten per cent. upon the taxes, the penalty however being in force only upon taxes accruing subsequent to the passage of the act. In providing for the collection of the taxes by suit and foreclosure the State waived as it might do the forfeiture of the land by sale and demanded only the taxes to be assessed thereon for the years subsequent to the sale and interest and costs. It could assert its lien for the taxes of subsequent years. Masterson *vs.* State, 42 S. W. 1003; Conklin *vs.* El Paso, 44 S. W., 883; Traylor *vs.* State, 46 S. W. 81; Clarke *vs.* Strickland, 5 Fed. Cases, 984 (8. C. 2 Curt. 439); Hodgden *vs.* Burleigh, 4 Fed. Rep. 111.

In Masterson *vs.* State, *supra*, decided by the court of civil appeals for the fourth district and in which a writ of error was refused
66 by the Supreme Court, it was held that although a sale of the land had been previously made, the lien continued to exist and might be foreclosed. That suit seems to have been for the taxes for which the land had been sold, and not as in this case for subsequent taxes. So also the case of Traylor *vs.* State, *supra*. But the sale in the first place was not an absolute sale and it has always been the policy of the State to extend the time for redemption of lands, and never to acquire them for itself. It had the right to waive the forfeiture which would become absolute by the lapse of time and permit a redemption upon condition that the owner would pay all taxes for the years subsequent, and it had the right to enforce this condition by a suit for foreclosure, no personal judgment being authorized against the owner. For the same reason the State in waiving its claim of forfeiture might impose as a condition of redemption the payment of legal interest on the taxes assessed against the land although there was no law in force at the time the taxes were laid providing for the collection of interest thereon. The lands were forfeited to the State by the sale for the taxes of 1884, the forfeiture to become absolute in two years. The offer of the State is to waive this forfeiture and restore the land to the owner if he will only pay the taxes accruing since then and six per cent. interest thereon together with the costs which had been incurred in making the sale and in making up the delinquent lists and of the suit. The State has waived its right of forfeiture on condition that the taxes with interest and costs shall be enforced against the land. This it might do. Conklin *vs.* El Paso, *supra*.

As above stated the law did not authorize the collection in this suit of the penalty prescribed in section 10 of the act; nor did it authorize a recovery for the taxes of 1884. While the judgment recites the State shall recover of the defendant the amount adjudged it provides that there shall be no personal execution against him. The judgment of the court below will be reformed so as to omit the taxes for 1884 and all penalties and to show no personal recovery

against the defendant for the amount of the taxes, interest and costs adjudged to be due and thus reformed will be affirmed. Reformed and affirmed.

C. C. GARRETT,
Chief Justice.

67 (Endorsed:) No. 2385. In court of civil appeals, Galveston. J. C. League, appellant, *vs.* The State of Texas, appellee. Opinion. Filed in court of civil appeals at Galveston Jan. 19, 1900. H. M. Knight, clerk. With app. No. 2611. Filed in supreme court Ap'l 4, 1900. Chas. S. Morse, clerk.

Judgment of the Court of Civil Appeals.

January 18, 1900.

J. C. League, Appellant,
vs.
The State of Texas, Appellee.
} No. 2385. From San Augustine County.

This cause came on to be heard on the transcript of the record, and the same being inspected, because it is the opinion of this court that there was error in the judgment of the court below in so far as it adjudged against the defendant a penalty of ten per cent. upon the taxes assessed against the lands described in the judgment and in allowing the plaintiff to recover for the taxes of 1884, it is therefore ordered that the judgment of the court below be reformed so as to omit said amounts, and it further appearing that, omitting said amounts, there is due the State of Texas the sum of twelve hundred and thirty-two and $\frac{77}{100}$ dollars for the taxes, interest and costs with interest thereon at 6 per cent. per annum from September 9th, 1899, upon the lands described in the petition, as follows, to wit:

1. Certificate 31*y*, abstract 260; total amount of the taxes, interest, and cost due on said lands on the 6th day of August, 1898, the sum of $69.47 for the taxes for the years 1885, '6, '7, and 1896.

2. Certificate 29*y*, abstract 261; total amount of taxes, interest, and costs, $65.26, for the taxes for the years 1885, '6, '7, '8, and 1896.

3. Certificate 34*y*, abstract 262; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $65.17.

4. Certificate 24*y*, abstract 263; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $64.63.

68 5. Certificate No. 28*y*, abstract 264; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $79.08.

6. Certificate 19*y*, abstract 265; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $65.22.

7. Certificate 40*y*, abstract 267; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, 1895, and 1896, $25.08.

8. Certificate 20*y*, abstract 268; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $66.87.

9. Certificate 33*y*, abstract 269; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $65.28.

10. Certificate 35*y*, abstract 270; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $65.64.

11. Certificate 36*y*, abstract 271; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, 1890, '1, and '6, $115.97.

12. Certificate 27*y*, abstract 275; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $64.88.

13. Certificate 30*y*, abstract 276; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $54.00.

14. Certificate 32*y*, abstract 277; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $65.28.

15. Certificate 37*y*, abstract 278; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $65.28.

16. Certificate 39*y*, abstract 279; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $64.59.

17. Certificate 38*y*, abstract 485; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, '9, 1894, & '5, $8.25.

18. Certificate 38*y*, abstract 486; total amount of taxes, interest, and costs for the years 1885 and 1887, $18.82.

And it is ordered, adjudged and decreed that a lien exists, in favor of the State of Texas, against each of said tracts above described for the amount of taxes, interests and costs adjudged to be due on them respectively, which lien is hereby foreclosed of each of said tracts of land.

69 It is further adjudged that a lien exists against all of said tracts of land collectively for the sum of one hundred and forty-four dollars, for printer's fees and costs due clerk and collector, which amount is included in the sum of twelve hundred and thirty-two & $\frac{77}{100}$ dollars heretofore adjudged in favor of the State of Texas, herein, which lien is hereby foreclosed on all of said tracts of land.

And it is further ordered that the clerk of the district court of San Augustine county do issue an order of sale directed to the sheriff or any constable of said county commanding him to seize and sell said land as if under execution, each tract separately for the sum set out against them respectively as above described with interest, and all of said tracts jointly for the sum adjudged them as costs with interest, but if defendant or his attorney shall at any time before the sale file with the officer selling the same, a written request that the property described therein shall be divided and sold in less tracts than the whole, together with a description of such subdivisions, then such officer shall sell the land in said subdivisions as the defendant may request, and in such case shall only sell as many subdivisions as near as may be to satisfy this judgment, interest and all costs; and after the payment of this judgment, interest and the costs, as fixed by the court below, due to the clerk, collector and printer aggregating the sum of one hundred and forty-four dollars, and all costs of this suit in the court below, the remainder of the purchase price, if any, to be paid by said officer to the clerk of said district court to be retained by him subject to the order of the district court of said county for the period of two years, after which time the said

court may order the same paid to the State treasurer, who shall hold the same in trust to be paid to the defendant in the manner prescribed by law.

It is further ordered that the officer executing said order of sale shall make deed or deeds to the purchaser or purchasers at such sale upon their complying with the terms thereof; such sale and deed thereunder to be made subject to the right of defendant to redeem the land so sold within two years from the date of said sale,
70-88 upon paying to the purchaser, double the amount of the money paid by said purchaser for said land, which condition shall be expressed in the deed to the purchaser.

It is further ordered that the order of sale herein directed to be issued, shall have the force and effect of a writ of possession as between the parties to this suit, or any one claiming under the defendants, or either of them, by any right acquired pending this suit, to place the purchaser or purchasers in possession; and the officer executing said order of sale, is directed by virtue thereof to place the purchaser or purchasers of such property at such sale in possession thereof within thirty days after such day of sale.

In the event said lands should not sell for enough to pay this judgment interest and costs, then it is ordered that no further execution issue in said cause from said district court.

It is further ordered and adjudged that the State of Texas pay all costs of this appeal, and this decision be certified below for observance.

89 * * * * * * *

Opinion of Court of Civil Appeals on Motion for Rehearing.

(Filed March 8, 1900.)

J. C. LEAGUE, Appellant,
vs.
THE STATE OF TEXAS, Appellee. } Motion No. 1740. On Motion for Rehearing.

In the case of City of Henrietta *vs.* Eustis, 87 Texas, 14, the supreme court held that the legislature had the power under the present constitution to authorize the collection of taxes by a suit in the district court and foreclosure of the lien therefor.

Appellant for the first time in his amended motion for a rehearing complains of the judgment of the court below, because it directs that the order of sale shall have the force of a writ of possession to put the purchaser in possession of the land within thirty days after date of sale. It was held in Masterson *vs.* State, 17 Texas Civ. App. 91, that it was error to award the writ, the law allowing the defendant two years in which to redeem the land. The judgment of the lower court will therefore be further reformed so as to stay the writ of possession for two years and until the further order of the court below. In all other respects the motion for rehearing will be overruled.

C. C. GARRETT,
Chief Justice.

90 (Endorsed:) No. 1740. In court of civil appeals, Galveston. J. C. League, appellant, *vs.* The State of Texas, appellee. Opinion on motion for rehearing. Filed in court of civil appeals, at Galveston, Mar. 8, 1900. H. M. Knight, clerk. With app. No. 2611. Filed in supreme court of Texas Ap'l 4, 1900. Chas. S. Morse, clerk.

Order of Court of Civil Appeals Entered on Motion for Rehearing.

(March 8, 1900.)

J. C. LEAGUE, Appellant,
vs.
THE STATE OF TEXAS, Appellee. } No. 1740, 2385. From San Augustine County.

On this day came on to be heard appellant's motion for a rehearing of this cause, and the same having been duly considered, it is ordered that the judgment of the court below be further reformed so as to stay the writ of possession for two years, and until the further order of the court below. In all other respects said motion is overruled; that the appellant, J. C. League, and his sureties, J. P. Alvey and J. R. Coryell, pay all costs of this motion.

* * * * * * *

91 (PROCEEDINGS IN THE SUPREME COURT.)

Petition for Writ of Error.

In the Supreme Court of the State of Texas.

J. C. LEAGUE, Appellant,
vs.
THE STATE OF TEXAS, Appellee.

Petition for writ of error to the court of civil appeals for the first supreme judicial district of Texas, at Galveston.

92 To the honorable supreme court of Texas:

Your petitioner J. C. League complaining of the State of Texas, respectfully submits to this honorable court his petition for a writ of error in cause No. 2385, styled J. C. League appellant *vs.* The State of Texas, appellee and pending in the honorable court of civil appeals for the first supreme judicial district of Texas, at Galveston, and respectfully shows that petitioner, the appellant in said cause, resides in the city of Galveston, that The State of Texas is appellee, and the Honorable Thomas S. Smith, attorney general of the State of Texas, and Mr. D. E. Simmons, his assistant, both reside in the city of Austin, Texas, and they, together with Mr. John Thomson, of San Augustine, Texas, are counsel of record for appellee.

Petitioner shows that this suit was brought in the district court of San Augustine county by The State of Texas, plaintiff, against J. C. League, defendant, and is known and styled on the docket of said

court as No. 1559, The State of Texas *vs.* J. C. League, and said suit was instituted under and by virtue of the provisions of chapter 103, General Laws of 1897, to recover State and county taxes alleged to have been assessed and due on eighteen tracts of land in San Augustine county, known as Southern Pacific Railway surveys, for the years from 1884 to 1896 inclusive, and to recover also six per cent. interest and ten per cent. penalty on said taxes, together with the cost of making and publishing the delinquent-tax records, etc., and costs of suit; and also for the establishment and foreclosure of an alleged lien for said taxes, interest, penalty, costs of making and publishing delinquent-tax record and costs of suit; and on the 9th day of September 1899 the district court of San Augustine county, on the hearing of said cause, rendered judgment in favor of the State of Texas, and against petitioner herein for said taxes, interest, penalties and cost of making and publishing delinquent-tax record, for the sum of $1,525.60 together with six per cent. per annum interest on said amount and costs of suit and sale,—said sum of $1,525.60 comprising the taxes, interest, 10 % penalty, costs of sale for taxes of 1884, printer's
93 costs, county clerk's and collector's fees, which several items computed separately are as follows:

Taxes for the year 1884	$97.56
Interest on 1884 taxes	74.31
Penalty on 1884 taxes	17.07
Taxes from 1885 to 1896 inclusive	723.93
Interest on taxes 1885 to 1896 inclusive	365.23
Penalty on taxes 1885 to 1896 inclusive	103.50
Costs of sale for tax of 1884	2.50
Clerk's fees and printer's costs	72.50
Collector's fees	69.00
Total judgment exclusive of court costs	$1,525.60

And said judgment established and foreclosed a lien on each of said tracts of land for the amount of taxes, interest and costs adjudged against each tract respectively and directed an order of sale commanding the officer to sell said land as under execution and to place the purchasers in possession within thirty days after the sale, providing also that no execution ever should issue against the defendant in case the lands did not bring the sums sufficient to satisfy the judgment.

Petitioner further shows that he perfected his appeal to the court of civil appeals of first supreme judicial district and said court on the 18th day of January 1900, holding that the law did not authorize the enforcement of either the ten per cent. penalty or the taxes for the year 1884, and that the law did not authorize a personal judgment against the defendant reformed said judgment in said particulars and rendered judgment *in rem*, severally, against each of said tracts of land for its respective amount of the taxes, interest and cost and jointly against all of said tracts for the sum of $144.00—printer's and clerk's and collector's fees—said judgment being for the aggregate sum of $1,232.77; and said judgment also

established and foreclosed a lien against each tract for its respective amount of the taxes, interest and costs adjudged against such tract, and a lien collectively against all of said tracts for said sum of $144.00 printer's, clerk's and collector's fees, and directed sale as under execution, first of each tract to satisfy the taxes, interest and costs adjudged against the same, and thereafter, the sale of all tracts collectively to satisfy said sums of $144.00; also requiring the officer making the sales to place the purchaser in possession within thirty days after sale.

94 As thus reformed, the judgment of the district court was affirmed by the court of civil appeals. And, on the first day of February 1900, petitioner filed his motion for a rehearing in said cause, and on the 8th day of March 1900 said court handed down a supplemental opinion further reforming said judgment, and directing that the writ of possession should not issue thereunder for a period of two years from date of sale and until further orders of the district court, and in all other respects overruling said motion.

Petitioner further shows, as grounds for this application for writ of error, that the honorable court of civil appeals, in its opinion, conclusions and judgment, has erred on points of law involved in this case, and duly raised in the trial court, and in the appellate court, and duly presented in petitioner's motion for a rehearing, in the following particulars, to wit:

First suggestion of error.—The court of civil appeals has fallen into error, it is submitted, in holding that the act (chapter 103, Gen'l Laws 1897) under which this suit is brought, does not authorize a personal judgment against the owner for the taxes due upon the land, and in reforming the judgment of the trial court, in pursuance of such ruling, and rendering judgment *in rem*, and refusing to remand the case so that the delinquent owner could be brought into court and judgment for the taxes rendered against such delinquent.

Argument.

Plaintiff's petition and exhibit (Tr. R., 9–27) alleged that the taxes were charged on the delinquent-tax record against James Turner M. S. Blanch, Cooper and Turner and against unknown owners, and defendant's answer under oath showed that he acquired the lands against which the taxes were charged about the year 1889, after all the taxes, except those for the year 1896, had accrued, and the petition and exhibit did not show any taxes charged against defendant on the delinquent-tax record. Your petitioner suggests error in the ruling of the court above referred to,—first,—because the constitution of this State makes the ad valorem taxes on land a

95 personal charge against the owner, to be fixed only by an assessment and the lien which under the constitution must also be fixed by the assessment, is necessarily, an incident to the debt, and the purpose and effect of the tax sale under this constitution, is to pass the title of the delinquent owner, and the legislature cannot, in conformity with the law of this State pass the title in a judicial proceeding in which the owner against whom the taxes

were assessed is not a party, and is not bound. Second, because a careful examination of the various provisions of this act will show, that both in letter and in spirit, the act provides for the institution of a personal suit against the delinquent owner to establish the assessment and to foreclose the lien primarily against the owner charged on the roll, and also against such parties as the State's attorney shall see proper to bring into the case as subsequent purchasers or incumbrancers or claimants. And section 15 prescribes process by publication in cases where the land is assessed to unknown owners which process is the foundation of the suit and indispensable to the exercise of jurisdiction by the court under this act.

It is not contended that the legislature could not, in the absence of any constitutional restriction or limitation as to the nature of the lien for taxes, fix such lien by the levy of the tax, and provide for its enforcement by a proceeding *in rem*, which would bind all parties interested in the land, when the process usual in such cases had been duly executed and the proceedings had been regular in all other respects; but the constitutional limitations in this State preclude any such arbitrary exercise of the taxing power.

While such an extraordinary exercise of the sovereignty of the State is not, it would seem, supported on the ground of necessity as in the case of maritime liens, it has, nevertheless, been recognized and sustained in some States of the Union. Cooley on Taxation, page 527; Blackwell on Tax Titles (3rd ed.) 547. The last-named author discusses in a clear and succinct manner (page 547 *et seq.*) the effect of a tax sale where the land alone is charged and the effect of such sale where the tax is made a personal charge and the tax and lien fixed by assessment, as follows: "In those States where the tax is a charge upon the land alone, where no resort in
96 any event, is contemplated against the owner or his personal estate, and where the proceeding is strictly *in rem*, the tax deed will undoubtedly have the effect to destroy all prior interest in the estate, whether vested or contingent, executed or executory, and those in possession, reversion and remainder. In such case the tax law itself is notice to the whole world of the liability of the land for all public assessment, and every one claiming an interest in the land is bound at his peril, to pay the tax and thus protect that interest from forfeiture or sale. If he neglects his duty in this respect, his title becomes extinct, and a new and independent title becomes vested in the purchaser, freed from all prior liens, incumbrances upon the former estate, and indeed of every interest carved out of the old fee. The fee of the land passes, and not the interest simply of the former owner. All that can be required of the purchaser in such cases, is to show title out of the State, prove the regularity of the proceedings and introduce his deed, and he makes out a complete and perfect title to the fee.

On the other hand, where the law requires the land to be listed in the name of the owner of the fee or of any other interest in the estate,—provides for a personal demand of the tax,—and in case of default authorizes the seizure of the body or goods of the delinquent,

in satisfaction of the tax,—and in terms, or upon a fair construction of the law, permits a sale of the land only when all other remedies have been exhausted,—then the sale and conveyance by the officer passes only the interest of him in whose name it was listed,—upon whom the demand was made,—who had notice of the proceeding, and who alone can be regarded as legally delinquent. In such cases the title is a derivative one, and the tax purchaser can recover, in ejectment, only such interest as he may prove to have been vested in the defaulter at the time of the assessment. Any other construction of laws containing such provision, would be in violation of the spirit which moved the legislature to enact them, and be a means of depriving innocent persons of their estate, persons who had no notice of the proceedings and who in consequence of this omission, can in no sense be delinquent."

97 The case of Yenda *vs.* Wheeler, 9th Texas 408, cited in support of the above-quoted text, is directly in point, holding that under the system of taxation, then in vogue in Texas, the tax was a personal charge against the owner to whom it was assessed and the tax sale and deed thereunder could only pass the title of the delinquent owner. And as the system of taxation now in force is the same as in the year 1852 when this decision was rendered, this case is still authority as to the effect of a tax sale under the constitution and laws of this State. The constitution of 1845 did not make the tax a lien, but it required an assessment, (sec. 27 art. 7) and the act of March 20th 1848 (art. 3128, Hartley's Digest) fixed the personal liability of the owner of the land and provided for fixing the lien by assessment substantially in the same manner prescribed by sections 11 and 15 of the constitution now in force, and we submit, that the provisions of the constitution making the tax a personal charge, to be enforced by levy upon any property belonging to the delinquent, fixing the lien by assessment, requiring notice to the owner and giving the owner the right of redemption, all show that the object and purpose of the laws of Texas, regulating sales for taxes, is to pass by the sale the derivative title of the owner against whom the taxes were assessed, and this is true, whether the land is rendered for assessment by the owner or is assessed to unknown owners; in both instances, the process to subject the property to sale by the collector or to the jurisdiction of the court where suit is brought, must under the constitution and tax laws of this State, be process *in personam*, in the nature of a citation personally served or duly published in order to bring the delinquent owner whether known or unknown before the court.

The text above quoted from Blackwell on Tax Titles clearly defines and differentiates the two methods of passing title to land by tax sales known to the jurisprudence of this country. That is, first by a proceeding *in rem* by which all parties in interest are bound and the title passed by the sale is absolute against the world. Second,—by a proceeding *in personam*, by which the property is affected and bound only through the person, and the title passed is

98 derivative, depending for its validity upon the title of the person in whose name the property is assessed and sold.

Yanda *vs.* Wheeler (*supra*), Clegg *vs.* State, 42nd Texas 605, Meredith *vs.* Coker, 65th Texas, 31; and all other cases in which tax titles under the laws of Texas have been asserted or discussed in the courts of this State show that the title passed by tax sales in this State is derivative and cannot be otherwise under the constitution of this State,—and if derivative, then the court must have jurisdiction over the person whose title is to be passed by the judgment.

Possibly in this case, a better title than that of the persons assessed as the owners, may be passed by the sale under the judgment rendered herein, as it is a fact (although not disclosed by the record) that the defendant acquired these lands by title adverse to that of the alleged owner, but, in the next case that comes up, the attorney for the State may be mistaken as to the true owner and by securing judgment by default or otherwise against a party without title fail to enforce the assessment against the real owners. Certainly the law does not authorize the State's attorney to "swap horses in the middle of the stream" and the precedent of abandoning the delinquent-tax record in a hunt for the present owner of the land charged with the taxes may, if adhered to, result in serious loss and inconvenience to the State. It is clear, we submit, that the design of the law is, that the rights of the State shall be fixed by the assessment, that claimants may be brought into court and estopped by the judgment; but that, at all events, the person who is charged with the tax by the assessment shall be brought before the court by the prescribed process and bound by the judgment,—and any attempt in this State under the restrictions of our constitution, to resort to a proceeding *in rem* for the enforcement of taxes is beyond the realm of due process.

But, admitting for the purpose of this argument, that the legislature could, under our constitution, authorize a proceeding *in rem* for the condemnation and sale of land for taxes, such proceeding must be in "*strictissimi juris*", and the trial court could not, where the assessment is against non-residents or unknown owners,
99 exercise jurisdiction, until the process by publication prescribed by section 15 of the act of 1897, had been duly executed. Cooley on Tax., 528 *et seq.*; Mayo *vs.* Ah Loy, 32nd Cali. 477; Meredith *vs.* Coker, 65th Texas 31.

Second suggestion of error.—The trial court erred in holding that the act (chap. 103, Gen'l Laws 25th Legislature) does not require this suit for taxes to be brought against the delinquent against whom the taxes were assessed, and the court of appeals erred in affirming this judgment and refusing to remand the case so that necessary parties could be made.

Argument.

Section three of said act prescribes the manner in which the delinquent-tax records shall be made out. Sections 4 and 5 provide for its examination and correction by the commissioners' court, and for its publication; and by section 6, this delinquent-tax list is made the basis of the suits to be instituted against the delinquent, and this section, after prescribing the requisites of the petitions to be filed

in the suits brought by virtue of said delinquent-tax list or record, provides that said petition "shall pray for judgment for the payment of the several amounts specified therein, and in default thereof, that said land be sold to satisfy said judgment, etc." These provisions show clearly, we submit, that the design and intention of this act was not merely to prescribe a proceeding for the condemnation and sale of the land for the taxes due thereon, but to authorize a suit under the general jurisdiction of the district court whereby all parties liable for the tax, or in any way interested in the land, should be brought before the court and, by its judgment, forever estopped from questioning the title to be passed by the sale under decree of the court. This is, we believe, an unusual method of enforcing the collection of taxes, possibly violating art. 2 of the State constitution, and certainly evading all the safeguards of the law by which the citizen is protected from the arbitrary or unauthorized acts of courts of limited jurisdiction in summary proceedings if the State can invoke the general powers and jurisdiction of the district court and clothe the tax sale made under its decree, with all the presumptions which are indulged in support of the judgment of a court of general jurisdiction, while at the same time, the court refuses to apply in this suit the general principles which obtain in courts of general jurisdiction as to the making of parties and adjusting rights legal and equitable between the proper and necessary parties. In Meredith *vs.* Coker, 65th Texas 31, our supreme court says: "The legislature cannot confiscate property by the sanctification of a tax deed." Neither can it, we submit, confiscate this defendant's property involved in this case by the sanctification of a suit for taxes in a court of general jurisdiction where he is not permitted to invoke the general powers and jurisdiction of the court in defending himself against the consequences of a delinquency for which he is not responsible and the enforcement of a debt for which he is not personally liable. In the case at bar the taxes were not assessed against the defendant. He is before the court solely by the exercise of the general jurisdiction of the court invoked by making him the sole party to this suit and alleging that he has become the purchaser of the property charged with the lien for taxes, and by the law of the land he has the right when sued, to demand by plea in abatement, or by demurrer, when the petition itself shows the defect of parties, that all parties necessary in the final determination of the suit and adjustment of his rights and equities shall be brought under jurisdiction of the court. The claim of the State is a personal claim against the delinquent owner who had failed to pay his taxes. It depends on the validity of the assessment against him (Clegg *vs.* State, *supra*). The defenses to be made pertain to the delinquent, the evidence of payment, if any, is in his knowledge or possession. The object of the sale is to pass his title. Under the law of the land this title may be passed by a sale and deed by the collector of taxes, based upon a legal levy and valid assessment; but to bind the owner and pass his title by suit, due process of law demands that he be brought before the court, and in no other way can he be estopped by its judgment. The officer

under this act is required to buy in the property for the State if there are no bidders. Is it likely, we respectfully ask, that there would be any bidders under a judgment and
101 sale which does not estop the person who, by the assessment is conceded to be the owner of the property. Our courts have always zealously guarded by their decisions, the validity and efficiency of execution sales. They have held that the description of the land in the judgment, and in the notice of sale must be sufficient, without resort to extraneous evidence, to enable the bidders at the sale to identify the land, that every safeguard prescribed by the law for the purpose of preventing a *sacrifice of property sold under* execution, must be strictly observed. But in this case the court itself is casting a cloud on the title by refusing to bring into the suit the delinquent who, as shown by the petition herein, claimed the land when assessed, and whose claim has never been divested and will not be divested by the sale in this suit if the judgment stands as now rendered.

Third suggestion of error.—The trial court erred in holding that the following enumerated provisions of chapter 103, Gen'l Laws 1897, are not retroactive and void, to wit.

a. The provisions of section No. 6 of said act, in so far as it authorizes the entry of judgment for 6 % per annum interest on taxes claimed in this case, which taxes, as shown by the records, were assessed and due and delinquent before said law was enacted, and at a period when the laws of this State provided for an annual seizure and sale of land for taxes, and did not authorize any exaction of interest.

b. The provisions of said act, chapter 103 General Laws 1897, which impose on the delinquent tax-payer, and on his land, fees and charges not authorized by law at the time of the levy and assessment of taxes, as follows:

Attorney's fees.—$3.00 on first tract and $1.00 for each addition-tract in same suit.

Collector's fees.—$1.00 for each correct assessment of the land to be sold.

County clerk's fees.—$1.00 on each delinquent assessment recorded and certified.

Dist. clerk's fees.—$1.50.

102 Sheriff's fees.—$1.00 for selling and making deed to each purchaser.

Publisher's fees.—25c. for each tract advertised as delinquent.

And the appellate court erred in affirming the judgment of the trial court for the interest and several sums taxed as fees under the above provisions.

Fourth suggestion of error.—The trial court erred in holding that the enforcement of the collection of the several sums as specified above, and imposed by chapter 103 General Laws 25th Legislature, retroactively, and after the taxes were due, against the tax-payer or against his land, under the nomenclature of interest, attorney's fees, county clerk's fees, district clerk's fees and publisher's fees, is not a taking of appellant's property without due process of law, and the appellate court has erred in affirming the judgment of the trial

court allowing interest, attorney's fees, collector's fees, county clerk's fees and publisher's fees in a suit for taxes which were due before said act authorizing these charges was adopted.

Argument under Third and Fourth Suggestion of Error.

Petitioner contends that the act in question, in so far as it seeks to increase the amount due the State for taxes assessed and due prior to the passage of said act, by adding charges, under the nomenclature of interest, costs, etc., as above specified in third suggestion of error,—is void,—first, because said act is retroactive and said charges form no part of the tax, or authorized incident, for costs pertaining to such tax when the right of the State to such tax accrued,—second, because said act, in so far as it imposes these charges and directs their enforcement by suit under the semblance of interest, costs of sale and of suit, when in the very nature of things, said charges are not and cannot be interest or costs of sale or of suit, is an attempt to deprive the citizen of his property without due process of law.

The petition in this case shows that the taxes were all assessed and due and delinquent before the adoption of the act of 1897, prior to which date, there was no law in force charging the several
103 sums above specified either against the owner or against his land. Interest is not an incident of a tax and cannot be demanded in the absence of statutory authority. Cave *vs.* Houston, 65th Texas 317, 53rd Texas 157.

A retroactive law increasing the costs of court, might perhaps be sustained, as pertaining to the remedy, but the sum exacted as interest in this case has nothing to do with the remedy and the expenses incurred by the State in preparing to bring suit, although christened "fees, printer's cost, clerk's fees, etc." have no relation or connection with the remedy and they formed no part of the collector's costs when the right of the State to these taxes accrued.

While the violation of the constitutional guaranty, that no person shall be deprived of life, liberty or property, without due process of law, has in a great majority of reported cases, resulted from a departure from the modes of procedure applicable to the particular case under the laws, usages and custom of the country; yet it is well settled that the violation of this guarantee may arise from any unjust act or edict of any branch or department of the Government, notwithstanding the fact that such act or edict is being enforced by a judicial proceeding regular in every respect—the case at bar is, we submit, within the last-named category—in so far as the legislative act seeks by the foreclosure proceeding in this case to evade the legal status of its claim for taxes, as fixed by the alleged tax sale and this feature of the law will be discussed hereinafter; but said act is also violative of the constitutional guaranty of due process in so far as it provides, under the nomenclature of interest and costs to enforce the collection from defendant, by sale of his land, of sums of money which formed no part or incident of the indebtedness when it accrued and for which the defendant cannot be held personally liable. In the case of Ryan *vs.* The State, 7th Nebraska, 276,

the statute provided: "That upon all taxes remaining delinquent for the space of one year, a penalty of 10 % shall attach, which shall be collected by such delinquent-tax collector as a part of the tax."

An attempt was made to give this act a retroactive effect.

104 The court says: "This penalty by the expressed provision of the statute, becomes an inseparable part or portion of the taxes which were delinquent at the time the act was passed; and in the collection of them it cannot be separated from them in violation of the law." Now it is said that, "penalties may be prescribed for future delinquencies, independent of taxes, as a part of the machinery by which the Government is enabled to collect them;" but such penalty is not taxation and cannot be sustained as a tax or any part of the revenue raised by taxation. If then, such penalty can be enforced it must be imposed simply as a method or machinery by which the Government is enabled to collect future delinquencies in the payment of taxes, and cannot be applied or enforced in the collection of taxes previously levied or delinquent; for in such case the law would be retroactive in its operation and cannot be sustained; and therefore, to enforce the penalty will be confiscation and not taxation, it is said that "the legislature can exercise no such function without conflicting with the clause of the constitution which is intended to guard private rights against oppression;" and that "even in the absence of any fundamental guarantee, such a use of a legislative power would be considered as contrary to the great first principles of the social compact. It is opposed to all reason and justice and the very nature and spirit of our form of Government forbid us to believe that the people intended to entrust the legislature with any such power. There would be no limitation of the time for which such laws might be made to retroact or the sums which might be exacted under them, save only the will of the lawmaker and the public exigency. Despotism itself could not employ more arbitrary means." Citing State *vs.* Mayor, 8th Vroom.

The legislature of this State in the act in question plainly recognizes the principle enunciated in the foregoing case by prohibiting the enforcement of the 10% penalty against delinquents indebted for taxes due before the passage of the law. In no respect does this penalty differ in nature from the sums claimed in the case at bar under the nomenclature of interest, fees, costs, etc. They are charges created and imposed *ex*

105 *post facto*. Interest in its essential nature must be authorized by law and must enter into and form a part or incident of the debt or obligation when it is created. Imposed retroactively it is not and *and* cannot be interest. It is simply a penalty; and the mere fact that it is imposed as a percentage per annum cannot make the exaction interest when in fact, it was not a legal incident of the debt or obligations when it accrued. The same reasoning applies to the sums claimed as fees and costs. They form no part or incident of the taxes or of the costs of collecting the taxes when they became due. Under the law of this State, at the time when these taxes became due, the delinquent was liable for the taxes assessed against

him, and he could have been made further liable for the costs of sale if the State pursued its remedy of sale by the collector, or, if the State resorted to suit the delinquent could be held for the customary costs of suit. Any sums exacted retroactively by the legislature, or by the courts under its authority, call it interest, fees, penalty, or lagniappe, is, we submit, an arbitrary exaction and the taking of property without due process of law.

This constitutional guaranty is ably discussed by the court in Camp *vs.* Rogers, 44th Conn., 291, as follows: "An act of the legislature which arbitrarily and without reason makes one person liable for the act of another is void, either as against natural justice or as a violation of that article of the constitution which forbids the taking of any person's property without due process of law. As to the meaning of the expression due process of law, as used in many of the constitutions of the States of the Union, Cooley, in his Constitutional Limitations, page 355, says: 'We have met in no judicial decision a statement that embodies more tersely and accurately the correct view of the principles we are considering than the following,—from an opinion of Mr. Justice Johnson of the Supreme Court of the United States: "The good sense of mankind has at last settled down to this,—that these words were intended to secure the individual from the arbitrary exercise of the power of government, unrestrained by the established principles of private rights
106 and distributive justice."' Again he says, page 175: 'The bill of rights of the American constitutions forbid that parties shall be deprived of property except by the law of the land; but if the prohibition had been omitted, a legislative enactment to pass one man's property to another would nevertheless be void.'"

This case is cited for its satisfactory exposition of the meaning of the term "due process." Also to illustrate our contention that this act operates unjustly on the defendant in this cause by compelling him through the instrumentality of the foreclosure proceeding to submit to the exaction of charges under the guise of interest, fees, costs, etc., for which he is not personally liable,—charges which were not a lien or enforceable against his land when he acquired it. The court of civil appeals following the case of Conklin *vs.* El Paso, 44th S. W., 883, in its opinion says: "The lands were forfeited to the State by the sale for the taxes of 1884. The forfeiture to become absolute in two years, the offer of the State is to waive this forfeiture and restore the land to the owner if he will only pay the taxes accruing since then and six per cent. interest thereon together with the costs which have been incurred in making the sale and in making up the delinquent-tax list and of this suit. The State has waived its right of forfeiture on condition that the taxes and interest might be enforced against the land. This it might do." And in Conklin *vs.* El Paso, cited by the court in support of the above ruling, the above-named retroactive exactions are sustained upon a similar line of argument as follows: "It is contended that this act cannot retroact, so as to increase the sums due prior to its passage beyond what the laws authorize when the taxes, respectively, became due. While we agree with this view, it would seem that in cases

where a tax sale was regular and consequently all the title the owner had left, was a right within a certain time to redeem by paying double the taxes, or where in such case the period for redemption had expired and no right remained in the owner, he would not be entitled to the benefits of said act of 1895, except upon the terms it provided. It is apparent that payment of taxes and interest
107 from 1885 to 1895, at six per cent. would be less than the sum defendant would have been obliged to pay under the laws as they existed at the time of sale in order to redeem the property. A law authorizing the suit for for-closure for such taxes would, when such suit is brought, re-invest him with a right to redeem by paying taxes and interest, a less sum than the laws existing at the time of sale demanded for such redemption."

This language is "dicta,"—as the court holds that the sale, in that case was void, and that the retroactive charges of interest and fees could not be enforced. A fact which was probably overlooked by the court of civil appeals in disposing of this case. The assumption on which the reasoning, above quoted, is based, viz: That the State has title to the land, is not warranted by the law or the fact. The State has abandoned its claim of title and in this suit is asserting a lien on the land for the taxes,—thus preventing the defendant in this suit from contesting the validity of the alleged sale while the appellate courts by their ruling in this case and "dicta" in Conklin *vs.* El Paso assume the validity of the tax sale and assert that the State has title and is graciously relinquishing that title on condition that the delinquent owner will pay in addition to the taxes six per cent. interest, cost of the abandoned sale, costs of the new sale, printer's fees, clerk's fees and collector's fees, all, except costs of first sale, having been imposed retroactively and having no warrant in law other than the naked assumption that the abandoned sale might have been legal, and if legal, then these charges imposed retroactively are legal, because they do not exceed the sum that would be required under a repealed law, to redeem the lands at the time of sale. That is to say,—while the State could not impose interest, or penalties, or costs retroactively, yet it can by christening these exactions "equivalents of redemption forfeit money" enforce its gratuity, so called, by means of a suit,—petitioner earnestly protests against this effort on the part of the State to force him by a suit, to redeem his land,—surely it will not be contended for a moment, that the State could maintain a suit to recover the redemption money as a part of the tax, and if this redemption money could
108 not be thus recovered, how can it, we respectfully ask, be made the basis of charging other and different sums under the nomenclature of interest, costs, etc. Petitioner respectfully submits that the position relative to the retroactive charge of interest, etc., taken by the court of civil appeals, of the fourth district, in Conklin *vs.* El Paso (*supra*) and followed by the appellate court in this case, is not tenable. The State may, if it sees fit, abandon any title to the land bid in at the sale for taxes of 1884 and may offer to relinquish its claim or lien against the land on such terms as are deemed proper, but acceptance is optional with the delinquent. If

the offer of the State is accepted, the settlement is binding, not because the State could legally force the delinquent, by suit or otherwise to accept the same, but because it is a consummated agreement. To hold that the State can prescribe retroactively the terms of settlement and enforce those terms by suit, would, we submit, invest the State with a most arbitrary and unreasonable power, under which the extent of its exaction could be measured only by the will or whims of the legislative body. Until repealed by the act of 1897, the law required as the condition upon which redemption would be allowed the payment of double the amount of tax, penalty and costs of sale. No suit could ever lie to recover this additional amount or penalty, imposed only as a condition on which the State would relinquish its lien or claim on the land for the taxes,—a mere offer, to be accepted or rejected, as the delinquent might see fit; yet this offer on the part of the State is made, in Conklin *vs.* The State (*supra*) the basis for the demand of penalty as an equivalent for the redemption penalty, which, although it could not be recovered by suit, might thus nevertheless be enforced, if this decision is correct, under the nomenclature of interest, fees and costs simply because these charges in the nature of *ex post facto* penalty, do not exceed the redemption money that the State might get by consent of the delinquent in return for its release of the land,—these charges could be as logically sustained, we respectfully submit, on the ground that the defendant is, or ought to be, able to pay them.

Possibly the writ of error in Conklin *vs.* El Paso did not
109 properly raise the constitutional question of the violation of the guaranty of due process; but if it did the rule of *stare decisis*, does not apply to constitutional questions, Willis *vs.* Owen, 43 Tex. 41. And the appellate courts of this State are not bound to follow a case deciding a constitutional question if it be clear that the question has not been settled on principle.

Conklin *vs.* The State (*supra*) was an action of trespass to try title, in which the court finds the sale of the land void, and in adjusting the equities of the parties as it could properly do in the exercise of its general jurisdiction, gives judgment for the taxes. The delinquent-tax act of 1895 is cited by the court as authority for the imposition of interest, but the fact is, that the said act of 1895 does not fix any rate of interest and there was no law of this State fixing a rate of interest on delinquent taxes until the act of 1897, cited *supra*. The collection of taxes and the enforcement of penalties for delinquency is a proceeding "*in invitum*," and a warrant in law for every charge must be clearly shown. The offer of the State in these acts to relinquish the State's claim, on payment of the taxes due together with 6 % interest, and other charges, cannot be construed into a law fixing the rate of interest on delinquent taxes, it will be noted that this provision as to redemption is es-entially retroactive in its nature and effect. While the provision fixing the rate of interest must in its nature be prospective. In Traylor *vs.* The State, 46th S. W. 81, cited by the appellate court, the question of the validity of the interest and fees imposed after the taxes were due, if involved, was not mentioned or discussed in the opinion. *In* Masterson *vs.* The State,

42 S. W. 1003, also cited by the court, is not authority, we submit, on the question of the validity of the retroactive provision of the act of 1897, as the taxes recovered in that case were assessed for the year 1895 and accrued after the passage of the act of 1895 under which the action in that case was brought. The objection to the costs and penalties urged in that case seems to have been, that the 14th amendment was violated by discriminating against the tax-payer, to which the court replied, that the provision (as to costs and penalties) applies to all citizens alike. This is true, yet
110 we submit there is a question as to whether the legislature has not discriminated in favor of the State and its officials, and against the citizen by allowing attorney's fees and other charges not authorized in ordinary suits. In all probability the case of G. C. & S. F. R'y *vs.* Ellis, 165 U. S., was not called to the attention of the appellate court in the cases referred to in the opinion in this cause, nor the fact emphasized, that the violation of the 14th amendment was not so much in the discrimination, as in the exaction of sums of money under the nomenclature of interest, fees and costs, when such exactions were not, in fact, interest, fees or costs properly attaching to the levy and collection of taxes.

Fifth suggestion of error.—The trial court erred in overruling defendant's demurrer, and by its judgment holding that the act of the legislature of the State of Texas, (chapter 103, General Laws of the State of Texas) is not void, as a retroactive law, and as an attempt on the part of the State of Texas to take the property of its citizens without due process of law, by bringing suit against a subsequent purchaser of property which had been previously sold to the State for taxes, and subjecting such property to judicial condemnation and resale, and the appellate court erred in affirming the judgment of the trial court and directing a condemnation and a second sale of the land in the possession of the defendant who acquired said land after the first sale.

Argument.

The petition alleges that the lands were sold to the State for the taxes of 1884 and prays for judgment for the taxes on said land for the years from 1884 to 1896 inclusive. Defendant's answer which the appellate court construed to be an admission of ownership, states that the defendant acquired the lands about the year 1889. The petition and copy of the delinquent-tax record showed that the lands were assessed, for a number of years, as the property of several individuals and for the other years as the property of unknown owners, but the taxes were never assessed against the defendant.

These facts all appear in the opinion of the appellate court.
111 The collector had power to make the previous sale. If it is voidable it is because of irregularities in the proceeding, not for want of power to make a summary sale (McFadden *vs.* Longham, 58 Tex. 519) and the State could just as well ignore a judgment legally rendered against it and provide for a second suit, to determine the questions decided by a previous judgment. If the land had been sold to a private citizen, beyond question, the rights of the

delinquent and the purchaser must stand as they are fixed by the sale. The State cannot, we submit, by a retroactive law, change the legal status of this sale. If it was regular, the State could recover the land; if irregular, possibly, in a suit in equity, where this fact was shown, it might still enforce its equitable lien against the delinquent who had not paid his taxes; but when the legislature sets this sale aside by a retroactive edict, and directs a new proceeding to enforce its lien for the taxes, for which the land had already been sold, together with additional amounts not warranted in law at the time of the sale, and further directs the enforcement of these exactions, against the property after it has been conveyed to a subsequent purchaser, it is respectfully insisted that the constitutional guaranty of due process of law has been violated.

It is also a question whether under the constitution the legislature has power to increase, in any way, the lien for the annual assessment as fixed by the constitution, which is for the taxes proper as assessed.

Sixth suggestion of error.—The court erred in affirming the judgment of the trial court and holding thereby, that the constitution of this State does not, by necessary implication drawn from its provision for the collection of taxes and for sales of property for taxes, preclude legislation providing for special judicial sale to enforce collection of delinquent taxes.

(*Remark.*)

Petitioner respectfully asks the consideration of his arguments and authorities under his third and fourth assignments of error, page 7, of his brief in the appellate court.

Seventh suggestion of error.—The appellate court erred in
112 affirming the judgment of the lower court and in establishing a general lien upon all the surveys involved, for collector's, printer's, county clerk's fees and all costs of this suit in the court below, and in directing the lands to be sold first, as separate tracts for the taxes and interest claimed by the State, and directing the lands to be sold a second time under the same order of sale to enforce the collection of said printer's, collector's and county clerk's fee, and costs of court.

Argument.

There is, it is respectfully submitted, but one lien on the land, authorized by the constitution or by said chapter 103 General Laws of 1897.

Upon the grounds herein urged, your petitioner respectfully prays for a writ of error to the honorable court of civil appeals for the first supreme judicial district of Texas, sitting at Galveston, Texas, and for a citation in error as provided by law, and that on the final hearing of this application the judgment of the district court of San Augustine county, Texas, and of the honorable court of civil

appeals for the first supreme judicial district be reversed and the cause remanded with proper instructions.

Respectfully submitted.

ROB'T M. FRANKLIN,
Attorney for Appellant.

(Endorsed:) App. No. 2611. In the supreme court of Texas. J. C. League, appellant *vs.* The State of Texas, appellee. Petition for writ of error to the court of civil appeals for the first supreme judicial district of Texas, at Galveston. Filed in court of civil appeals at Galveston, Mar. 31, 1900. H. M. Knight, clerk. Filed in supreme court Ap'l 4, 1900. Chas. S. Morse, clerk. Granted. (Rob't M. Franklin, attorney for appellant.)

113 *Order of Supreme Court Granting Application for Writ of Error.*

J. C. LEAGUE *vs.* THE STATE OF TEXAS. } App. No. 2611. From San Augustine County, First District.

APRIL 12, 1900.

This day came on to be heard the application of J. C. League, for a writ of error to the court of civil appeals for the first supreme judicial district, and the same having been duly considered, it is ordered that said application be granted, and the writ of error issue, as prayed for.

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114 *Order of Submission in Supreme Court.*

J. C. LEAGUE *vs.* THE STATE OF TEXAS. } No. 906.

MAY 3RD, 1900.

Submitted on briefs and printed arguments for both parties.

Opinion of Supreme Court.

J. C. LEAGUE *vs.* THE STATE OF TEXAS. } No. 906. From First District, San Augustine County.

Under the provisions of chapter 103 of the General Laws of 1897, page 132, this suit was instituted in the district court of San Augustine county to foreclose the State's lien for the taxes of the years 1884 to 1896, inclusive, upon fourteen tracts of land lying in said county, patented in the name of the Southern Pacific Railroad Company.

115 It was alleged that the plaintiff in error was the owner of the said land, that it had been regularly assessed for taxes in the names of different parties for each year, and, after January 1st, 1885, each tract had been sold for the taxes of 1884, at which sale the State bid it in according to law. The petition alleged that the

county commissioners' court of San Augustine county had caused the tax collector of the said county to prepare a list of "all lands, lots or parts of lots sold to the State of Texas for the taxes since the first day of January, 1885, which had not been redeemed according to law," and also alleged that the county commissioners had examined and approved said list and caused the same to be published, as prescribed by said act. The petition was sworn to as required by the statute.

The defendant answered by a general demurrer and special exceptions and by special answer, which contained the following allegations: "And for answer in this behalf, defendant denies all and singular the allegations of plaintiff's petition, and further answering, defendant shows that he purchased the lands described in plaintiff's petition and exhibits about the year 1889; that said lands have been sold by the collector of taxes of San Augustine county for 1884 taxes and for the taxes of subsequent years and they have, in every instance, been bid in by the collector of taxes for the State of Texas, in obedience to the laws of the said State." The answer of the defendant was sworn to.

The evidence showed that the lands had been assessed for taxes in each year, as alleged, and that each survey had been sold for taxes of 1884 and bid in by the State; that the lands were not assessed as the property of the defendant for any year named, but were assessed in different names as owners, and for some years, as the property of unknown owners. The proof showed that the commissioners' court of San Augustine county had complied with the law in making the list and in causing the same to be recorded and published and that the land had never been redeemed from the State.

The case was tried before the court without a jury and judgment was rendered in favor of the State against the defendant,
116 League, foreclosing the State's lien upon the land described in the petition for the amount of the taxes due to the State, with the interest at six per cent. per annum and penalties as prescribed by the statute, with the cost provided by chapter 103, and the cost of court, and directing the sale of the land. It was also ordered that the purchaser be placed in possession within thirty days as in the case of ordinary foreclosures. The judgment was, by the court of civil appeals, reformed so as to eliminate the ten per cent. damages and that clause which awarded possession within thirty days, giving right of redemption within two years. As reformed, the judgment of the district court was affirmed.

The writ of error was granted because we were of opinion that the imposition of interest upon the taxes, after they had accrued, was violative of section 16, article 1, of the constitution, there being no law in force at the time the taxes were levied and assessed which authorized the collection of interest thereon. But, upon more careful examination of the case, we are satisfied that the judgment of the court of civil appeals is correct and must be affirmed.

We deem it unnecessary to enter into a discussion of the various grounds presented in the application for the writ of error; they are

well disposed of by the opinion of Chief Justice Garrett: However, upon the point on which the writ was granted, we will say that the answer of the defendant sets up the sale of the lands for taxes and the purchase of them by the State, insisting that the State is bound by its purchase. No attack is made upon the sale nor upon any of the proceedings leading up to it and it stands before the court, under the defendant's allegations, as a valid sale by which the title passed to the State. The State having acquired the title, had the power to waive its right, and in order to perfect the claim beyond all dispute, to foreclose its lien on the land as against the then claimant, and in doing so, had the authority to prescribe such terms as it deemed proper and just. The claimant of the lands being a party defendant, could have disclaimed any interest in it and might thus have escaped any cost for proceedings had after such disclaimer. The defendant
117 chose not to pursue this course, and he has no cause of complaint as the case stands before this court, because, by his own showing, he had no title to be affected by it and depended solely upon the grace of the State for whatever he might get out of the land. This conclusion is based upon the fact that the title in the State is perfect and it is not intended to express an opinion on the question when the proof does not show this fact.

The defendant claims that his general denial prevents the taking of the answer as true and that there was no proof showing that the State had title in the land or that the defendant himself was claiming title thereto. The law under which this proceeding is had required the pleadings of both parties to be sworn to. A general denial is not applicable to this case. It is similar to the practice in case of mandamus, where it is held that because a defendant is required to traverse the allegations of the plaintiff or to confess and avoid them, a general denial is no answer and will not prevent judgment being taken upon the petition and the answer. Sampson *vs.* Mercer, 68 Tex., 488. It was unnecessary for the State to prove the facts alleged and sworn to by the defendant. Ogden & Johnson *vs.* Bosse, 86 Tex., 344.

The judgment of the court of civil appeals is affirmed, with the costs of this court adjudged against the plaintiff in error.

T. J. BROWN,
Associate Justice.

(Endorsed:) No. 906, J. C. League, plaintiff in error *vs.* The State of Texas, defendant in error. Opinion. Judgment of the court of civil appeals affirmed. Filed in supreme court May 21, 1900. Chas. S. Morse, clerk.

Judgment of the Supreme Court.

J. C. LEAGUE
vs.
THE STATE OF TEXAS. } No. 906. From San Augustine County, First District.

Opinion delivered by Associate Justice Brown.

118 MAY 21ST, 1900.

This cause came on to be heard on writ of error to the court of civil appeals for the first supreme judicial district, and the original transcript in said cause being before the court, as well as the transcript showing the proceedings had in said court of civil appeals, and these having been duly considered, because it is the opinion of this court that there was no error in the judgment of the court of civil appeals: it is therefore considered, adjudged and ordered that the judgment of the court of civil appeals be in all things affirmed, which judgment is as follows:

"This cause came on to be heard on the transcript of the record, and the same being inspected, because it is the opinion of this court that there was error in the judgment of the court below in so far as it adjudged against the defendant a penalty of ten per cent. upon the taxes assessed against the lands described in the judgment and in allowing the plaintiff to recover for the taxes of 1884, it is therefore ordered that the judgment of the court below be reformed so as to omit said amounts, and it further appearing that, omitting said amounts, there is due the State of Texas, the sum of twelve hundred and thirty-two and $\frac{17}{100}$ dollars for taxes, interest and costs, with interest thereon at 6 per cent. per annum from September 9th 1899, upon the lands described in the petition, as follows, to wit:

1. Certificate 31*y*, abstract 260; total amount of the taxes, interest, and costs due on said lands on the 6th day of August, 1898, the sum of $69.47 for the taxes for the years 1885, '6, '7, and 1896.

2. Certificate 29*y*, abstract 261; total amount of taxes, interest, and costs, $65.26, for the taxes for the years 1885, '6, '7, '8, and 1896.

3. Certificate 34*y*, abstract 262; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $65.17.

4. Certificate 24*y*, abstract 263; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $64.63.

5. Certificate No. 28*y*, abstract 264; total amount of taxes, interest, and costs for the years 1885, '6, '7, 8, and 1896, $79.08.

119 6. Certificate 19*y*, abstract 265; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $65.22.

7. Certificate 40*y*, abstract 267; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, 1895, and 1896, $25.08.

8. Certificate 20*y*, abstract 268; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $66.87.

9. Certificate 33*y*, abstract 269; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $65.28.

10. Certificate 35*y*, abstract 270; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $65.64.

11. Certificate 36*y*, abstract 271; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, '9, 1890, '1, & '6, $115.97.

12. Certificate 27*y*, abstract 275; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $64.88.

13. Certificate 30*y*, abstract 276; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $54.00.

14. Certificate 32*y*, abstract 277; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $65.28.

15. Certificate 37*y*, abstract 278; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1890, $65.28.

16. Certificate 39*y*, abstract 279; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, and 1896, $64.59.

17. Certificate 38*y*, abstract 485; total amount of taxes, interest, and costs for the years 1885, '6, '7, '8, '9, 1894, & '5, $8.25.

18. Certificate 38*y*, abstract 486; total amount of taxes, interest, and costs for the years 1885 and 1887, $18.82.

And it is adjudged, ordered and decreed that a lien exists, in favor of the State of Texas, against each of said tracts above described, for the amount of taxes, interests and costs adjudged to be due on them respectively, which lien is hereby foreclosed of each of said tracts of land.

It is further adjudged that a lien exists against all of said
120 tracts of land collectively for the sum of one hundred and forty-four dollars, for printer's fees and costs due clerk and collector, which amount is included in the sum of twelve hundred and thirty-two and $\frac{77}{100}$ dollars heretofore adjudged in favor of the State of Texas, herein, which lien is hereby foreclosed on all of said tracts of land.

And it is further ordered that the clerk of the district court of San Augustine county do issue an order of sale directed to the sheriff or any constable of said county, commanding him to seize and sell said land as if under execution, each tract separately for the sum set out against them respectively as above described with interest, and all of said tracts jointly for the sum adjudged them as costs with interest, but if defendant, or his attorney shall at any time before the sale, file with the officer selling the same, a written request that the property described therein shall be divided and sold in less tracts than the whole, together with a description of such subdivisions as the defendant may request, and in such case shall only sell as many subdivisions as near as may be to satisfy this judgment, interest and all costs; and after the payment of this judgment, interests and costs as fixed by the court below, due to the clerk, collector and printer, aggregating the sum of one hundred and forty-four dollars, and all costs of this suit in the court below, the remainder of the purchase price, if any, to be paid by said officer to the clerk of said district court to be retained by him subject to the order of the district court of said county for the period of two years, after which time the said court may order the same paid to

the State treasurer, who shall hold the same in trust to be paid to the defendant in the manner prescribed by law.

It is further ordered that the officer executing said order of sale shall make deed or deeds to the purchaser or purchasers at such sale upon their complying with the terms thereof; such sale and deed thereunder to be made subject to the right of defendant to redeem the land so sold within two years from the date of said sale, upon paying to the purchaser, double the amount of the
121 money paid by said purchaser for said land, which condition shall be expressed in the deed to the purchaser.

It is further ordered that the order of sale herein directed to be issued, shall have the force and effect of a writ of possession as between the parties to this suit, or any one claiming under the defendants, or either of them, by any right acquired pending this suit, to place the purchaser or purchasers in possession; and the officer executing said order of sale is directed by virtue thereof to place the purchaser or purchasers of such property at such sale in possession thereof within thirty days after such day of sale.

In the event said lands should not sell for enough to pay this judgment, interest and all costs, then it is ordered that no further execution issue in said cause from said district court. It is further ordered, and adjudged that the State of Texas pay all costs of this appeal and this decision be certified below for observance."

It is further ordered that the plaintiff in error, J. C. League, principal and his sureties, J. P. Alvey and J. R. Corvell, pay all costs in this court incurred, and this decision be certified to the district court for observance.

Motion for Rehearing in Supreme Court.

Filed June 4, 1900.

In the Supreme Court of Texas.

J. C. LEAGUE, Plaintiff in Error,
vs.
THE STATE OF TEXAS, Defendant in Error. } No. 906.

Motion by plaintiff in error for a rehearing.

Plaintiff in error, in the above-entitled cause, moves the court to grant him a rehearing, and respectfully suggests that this
122 honorable court make inquiry as to whether it is in error in its rulings and judgment as follows:

First. In holding that the imposition, by the act of 1897 (chapter 103 General Laws), of interest, attorney's, collector's, county clerk's, printer's and sheriff's fees, as a lien on the land on which taxes had been assessed, after such taxes had accrued, and the enforcement of said retroactive charges by the foreclosure proceeding prescribed by said act is not a taking of property without due process of law.

Second. This suit being a special judicial proceeding to foreclose the State's lien for taxes, the jurisdiction of the court over the sub-

ject-matter was restricted by the act prescribing the procedure to the enforcement of the State's lien for taxes, and the court had no power to adjudicate the question of title, and conceding, only for the purposes of this proposition, that there is proof, or admission of title, in the record, any adjudication of the title, or of any right incident to the title or ownership of the property, is repugnant to the alleged cause of action, and counsel for plaintiff in error respectfully asks this court to enquire whether its ruling and judgment herein,—ignoring the allegations in the petition of defendant's ownership and the State's lien, and sustaining the retroactive imposition of interest and fees by finding that the State had title to the property, which would authorize said charges, and by adjudicating the issue of title without the introduction of muniments of title and without any attempt to deraign title from the sovereignty of the soil,—does not embody all the elements of an arbitrary edict or exaction enforced by this court by disregarding the usual and regular course of judicial procedure.

Third. Error is also suggested as to the ruling that the act of 1897 (chapter 103 General Laws) has in fact prescribed, or could, under the constitution of the State of Texas, prescribe a judicial proceeding *in rem* for the sale of land for taxes without citation or process bringing the delinquent against whom the taxes were
123-128 assessed into court and binding such delinquent by the proceeding.

Fourth. The petition in this case shows that the lands therein described were sold to the State for taxes for the year 1884, and that said lands were acquired by the defendant after said sale; no subsequent legislation could change or modify the respective rights of the State and this defendant as fixed under the law by these transactions, unless such legislation was predicated on the assent of the party whose right is to be affected, and this court has fallen into error in holding that the said act of 1897 is not unconstitutional and void in so far as it seeks to evade the legal status of the parties as fixed at the date when defendant purchased said land, by special judicial proceeding in which said defendant could not assert an independent outstanding title, and in which he is not permitted to traverse the allegations of the petition without denying under oath transactions of which, in the very nature of things, he could have no personal knowledge.

* * * * * * *

129 The Honorable T. S. Smith, attorney general, and the Hon. D. E. Simmons, counsel for defendant in error, both reside in the city of Austin, Texas. Plaintiff in error prays for notice to said counsel of the filing of this motion, and for a rehearing in this cause.

Respectfully submitted.

ROB'T M. FRANKLIN,
Attorney for Plaintiff in Error.

AUSTIN, TEXAS, *June* 14, 1900.

Having this day received a copy of the foregoing motion for rehearing, service of a copy on me is hereby waived.

T. S. SMITH,
By D. E. SIMMONS,
Attorneys for Defendant in Error.

130 (Endorsed:) Mo. No. 781. No. 906. In the supreme court of Texas. J. C. League, plaintiff in error *vs.* The State of Texas, defendant in error. Motion of plaintiff in error for a rehearing. (Original.) Filed in supreme court June 4, 1900. Chas. S. Morse, clerk. By F. T. Connerly, deputy. Overruled.

Order of Supreme Court of Texas Overruling Motion for Rehearing.

J. C. LEAGUE
vs.
THE STATE OF TEXAS. } Mo. 781. No. 906. From San Augustine County, First District.

JUNE 28TH, 1900.

This day came on to be heard the motion of the plaintiff in error for a rehearing, and the same having been duly considered, it is ordered that said motion be overruled; that the plaintiff in error, J. C. League and his sureties, J. P. Alvey and J. R. Coryell, pay all costs of this motion.

131 In the Supreme Court of the State of Texas.

J. C. LEAGUE, Plaintiff in Error,
vs.
THE STATE OF TEXAS, Defendant in Error. } No. 906.

Petition for Writ of Error and Supersedeas.

J. C. League, plaintiff in error in the above-entitled cause feeling himself aggrieved by the judgment of the district court of San Augustine county, Texas, entered on the ninth day of September A. D. 1899 and by the judgment of the court of civil appeals of the first supreme judicial district of the State of Texas reforming and affirming said judgment of said district court on the 18th day of January A. D. 1900 and by the final judgment on writ of error rendered in said cause by the supreme court of the State of Texas on the 21st day of May A. D. 1900, and made final by an order overruling the motion for a rehearing on the 28th day of June, A. D. 1900, comes now by Robert M. Franklin his solicitor and petitions said court for an order allowing said plaintiff in error (defendant in the trial court) to prosecute a writ of error to the honorable Supreme Court of the United States of America, under an- in accordance with the laws of the United States in that behalf made and provided to the end that the manifest errors apparent in said judgment may be corrected and also that an order be made fixing the security which

said plaintiff shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings in this court be suspended until the determination of said writ of error by the Supreme Court of the United States,—and your petitioner will ever pray.

ROB'T M. FRANKLIN,
Solicitor for Plaintiff in Error.

Allowed and the amount of the supersedeas bond fixed at $2,500.00.

R. R. GAINES,
Chief Justice of the Supreme Court of the State of Texas.

(Endorsed:) No. 906. In the supreme court of the State of Texas. J. C. League, plaintiff in error *vs.* The State of Texas, defendant in error. Petition for writ of error and for supersedeas to Supreme Court of the United States. Filed in supreme court of Texas July 16, 1900. Chas. S. Morse, clerk.

131½ *Supersedeas Bond for Writ of Error.*

Know all men by these presents that we, J. C. League, as principal, and Geo. Seeligson and Jacob Sonnentheil, as sureties, are held and firmly bound unto the State of Texas in the full and just sum of twenty-five hundred dollars to be paid to the said State of Texas, certain attorney, executors, administrators, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally by these presents.

Sealed with our seals and dated this — day of July in the year of our Lord one thousand nine hundred.

Whereas, lately at a term of the supreme court of the State of Texas held in the city of Austin in said State in a suit depending in said court between J. C. League plaintiff in error and the State of Texas, defendant in error, wherein was drawn in question the validity of a statute or authority exercised under said State, on the ground that being repugnant to the Constitution of the United States and the decision was in favor of such their validity a judgment was rendered against the said J. C. League, and the said J. C. League having obtained a writ of error and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit and a citation directed to the Honorable Joseph D. Sayers, governor of the State of Texas and to the Honorable Thomas S. Smith, attorney general of said State, citing and admonishing them to be and appear at a Supreme Court of the United States at Washington within 30 days from the date thereof.

Now, the condition of the above obligation is such, that if the said J. C. League shall prosecute said writ of error to effect and answer all damages and costs if he shall fail to make his plea good,

then the above obligation to be void; else to remain in full force and virtue.

J. C. LEAGUE. [SEAL.]
GEO. SEELIGSON. [SEAL.]
JACOB SONNENTHEIL. [SEAL.]

Sealed and delivered in presence of—
ROB'T M. FRANKLIN.
BRADFORD HANCOCK.

I, Geo. Seeligson, do swear that I am worth in my own right at least the sum of twenty-five hundred dollars after deduct-
132 ing from my property all that which is exempt by the constitutional laws of the State from forced sale, and after payment of all my debts of every description, whether individual or security debts, and after satisfying all incumbrances on my property which are known to me; that I reside in Galveston county, State of Texas, and have property in said State liable to execution worth $2,500.00 or more.

GEORGE SEELIGSON.

Sworn to and subscribed before me this 14th day of July, A. D. 1900.

BRADFORD HANCOCK,
[SEAL.] *Notary Public in and for Galveston County, Texas.*

I, Jacob Sonnentheil, do swear that I am worth in my own right at least the sum of twenty-five hundred dollars, after deducting from my property all that which is exempt by the constitutional laws of the State from forced sale, and after payment of all my debts of every description whether individual or security debts and after satisfying all incumbrances of my property which are known to me; that I reside in Galveston county, State of Texas and have property in said State liable to execution worth $2,500.00 or more.

JACOB SONNENTHEIL,

Sworn to and subscribed before me this 14th day of July A. D. 1900.

BRADFORD HANCOCK,
[SEAL.] *Notary Public in and for Galveston County, Texas.*

Approved by—
R. R. GAINES,
Chief Justice of the Supreme Court of the State of Texas.

Endorsed: J. C. League, plaintiff in error *vs.* The State of Texas, defendant in error. Supersedeas bond for writ of error. Filed in supreme court of Texas July 16th, 1900. Chas. S. Morse, clerk.

133 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the honorable the judges of the supreme court of the State of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of Texas before you, or some of you, between J. C. League, plaintiff in error and The State of Texas, defendant in error a manifest error hath happened, to the great damage of the said J. C. League as by his complaint appears. We, being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Seal United States Circuit Court, Eastern District of Texas.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 14th day of July, in the year of our Lord one thousand nine hundred.

C. DART,
Clerk of the Circuit Court of the United States for the Eastern District of Texas,
By GEO. H. BURNETT,
Deputy at Galveston.

Allowed by—
R. R. GAINE,
Chief Justice of the Supreme Court of the State of Texas.

[Endorsed:] J. C. League, plaintiff in error, *vs.* The State of Texas, defendant in error. Original. Writ of error. Filed in supreme court of Texas July 16, 1900 Chas. S. Morse, clerk.

134 UNITED STATES OF AMERICA, *ss:*

To the Honorable Joseph D. Sayers, governor of the State of Texas, and to the Honorable Thomas S. Smith, attorney general of the State of Texas, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the clerk's office of the supreme court of the State of Texas, wherein J. C. League is plaintiff in error and The State of Texas is defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error men-

tioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable R. R. Gaines, chief justice of the supreme court of the State of Texas, this — day of ——, in the year of our Lord one thousand nine hundred.

R. R. GAINES,
Chief Justice of the Supreme Court of the State of Texas.

[Endorsed:] J. C. League plaintiff in error *vs.* The State of Texas defendant in error. Citation. Filed in supreme court of Texas July 16, 1900. Chas. S. Morse cl'rk.

Service of citation on behalf of the defendant in error, The State of Texas, is hereby waived.

Austin, Texas, July 19th, 1900.

JOSEPH D. SAYERS,
Governor of the State of Texas.
T. S. SMITH,
Attorney General of the State of Texas.

135 *Assignment of Errors for Writ of Error to Supreme Court of the United States.*

In the Supreme Court of the State of Texas.

J. C. LEAGUE, Plaintiff in Error,
vs.
THE STATE OF TEXAS, Defendant in Error. } No. 906.

Assignment of errors for writ of error to the Supreme Court of the United States.

Now comes J. C. League, plaintiff in error, by his solicitor and says that the honorable supreme court of the State of Texas, in affirming the judgment of the district court of San Augustine county, Texas, as reformed and affirmed by the court of civil appeals of the first supreme judicial district of Texas, has erred in its opinion, rulings and judgment as follows:

First. In holding that the plaintiff in error is not deprived of his property without due process of the law of the land by the foreclosure in this suit of the alleged lien and the sale of his property to enforce collection of charges or burdens retroactively imposed by act of the legislature of the State of Texas (chapter 103 General Laws 1897) under the guise of interest, fees and costs, and added to the delinquent taxes that had accrued prior to the passage of said act.

Second. In holding that the provisions of said act for the judicial condemnation and resale of land previously sold to the State for taxes, can be enforced against such lands in the possession of a subsequent purchaser; and that said act does not violate the constitutional guaranty of due process of law in so far as it ignores the legal effect of prior sales and directs a second sale of the land involved in

this suit for the taxes for which such lands had been already sold.

Third. The honorable supreme court of the State of Texas,
136 has by its ruling and judgment in this suit, if not corrected, deprived plaintiff in error of his property without due process of law, by ignoring the fact, apparent of record, that the charges of interest, fees and costs were retroactively imposed and sustaining the judgment for said invalid fees, charges, etc., by finding as a conclusion of fact that the State has title to the lands involved, although said finding is not responsive to any issue raised by the pleadings and is repugnant to the allegations of the plaintiff's petition in the trial court, and to the judgment made and entered in this cause, establishing and foreclosing a lien on the property in question; and although said finding cannot be logically or legally deduced or inferred from the defendant's answer in the trial court.

ROB'T M. FRANKLIN,
Solicitor for Plaintiff in Error.

(Endorsed:) No. 906. In the supreme court of the State of Texas. J. C. League, plaintiff in error *vs.* The State of Texas, defendant in error. Assignment of errors for writ of error to Supreme Court of the United States. Filed in supreme court of Texas, July 16th, 1900. Chas. S. Morse, clerk.

137 CLERK'S OFFICE, SUPREME COURT.

I, Charles S. Morse, clerk of the supreme court of Texas, hereby certify that the foregoing one hundred and thirty-six pages contain a true and correct copy of the transcript of the proceedings had in the district court of San Augustine county, Texas, in its cause No. 1559, styled The State of Texas *vs.* J. C. League, together with all proceedings had on appeal to the court of civil appeals for the first supreme judicial district, at Galveston and on writ of error to the supreme court, as the same appears from records and papers pertaining to said cause now on file in my office; also the original writ of error and the original citation in error, with acceptance of service thereon, a copy of the writ of error bond, and the original assignments of error.

In testimony whereof, witness my hand and the seal of the supreme court of Texas, this the 4th day of August, A. D. 1900.

[Seal Supreme Court of the State of Texas.]

CHAS. S. MORSE, *Clerk.*

138 In the Supreme Court of the United States.

J. C. LEAGUE, Plaintiff in Error,
vs.
THE STATE OF TEXAS, Defendant in Error. } No. —.

Stipulation of Counsel Designating those Parts of the Record which are to be Printed.

Be it remembered that counsel for both parties, in the above-entitled cause hereby agree that all parts of the transcript of said cause filed in the Supreme Court of the United States, which are not hereinafter designated, may be omitted from the printed record of said cause, and that the following designated parts shall be printed, to wit:

1st. Caption ..... Page 1
2nd. Plaintiff's amended original petition (omitting Exhibit "A" given in statement of facts) ..... " 1 to 4
3rd. Defendant's original answer.. ..... " 23 to 26
4th. Plaintiff's trial amendment ..... " 26
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Witness our hands this 23d day of August, A. D. 1900.

T. CHARLES HUME,
Attorney for Plaintiff in Error.
T. S. SMITH,
Attorney General of the State of Texas and Attorney for The State of Texas, the Defendant in Error.

140 [Endorsed:] No. —. In the Supreme Court of the United States. J. C. League, plaintiff in error *vs.* State of Texas, defdt. in error. Stipulation of counsel designating parts of the record to be printed.

141 [Endorsed:] File No. 17,877. Supreme Court U. S., October term, 1900. Term No. 392. J. C. League, pl'ff in error, *vs.* The State of Texas. Stipulation of counsel designating parts of record to be printed.

[Stamped:] Office Supreme Court U. S. Filed Sep. 10, 1900. James H. McKenney, clerk.

142 In the Supreme Court of the United States of America.

J. C. LEAGUE, Plaintiff in Error,
vs.
THE STATE OF TEXAS, Defendant in Error.
} No. 137 (October Term, 1901).

Stipulation of Counsel Designating, for Printing, a Part of the Record Omitted in Original Stipulation.

Be it remembered that counsel for both parties in the above-entitled cause hereby agree that in addition to the parts designated in stipulation heretofore filed in this cause, the following shall be printed in the record, to wit:

(16½.) Motion of plaintiff in error for a rehearing in the supreme court of the State of Texas. (Omitting from the printed record the argument of counsel contained in said motion.)

(24½.) This stipulation is also to be inserted.

Witness our hands this 2nd day of July, A. D. 1901.

T. CHARLES HUME,
Counsel for Pl'ff in Error.
C. K. BELL,
Att'y Gen'l of Texas, Counsel for Def't in Error.

143 [Endorsed:] No. 137 (Oct. term, 1901). In Supreme Court of the United States. J. C. League, pl'ff in error, *vs.* The State of Texas, def't in error. Stipulation for the addition of plaintiff's motion for rehearing in sup. ct. of Texas to the parts of the record to be printed.

144 [Endorsed:] File No. 17,877. Supreme Court U. S., October term, 1901. Term No. 137. J. C. League, P. E., *vs.* The State of Texas. Stipulation designating additional part of record for printing. Filed July 8, 1901.

Endorsed on cover: File No. 17,877. Texas supreme court. Term No. 137. J. C. League, plaintiff in error, *vs.* The State of Texas. Filed August 17th, 1900.